Supreme Court, U.S.
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OFFICE

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH A KOZEL,

Petitioner,

v.

MARY ROBINSON, ADMINISTRATOR, ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE ILLINOIS SUPREME COURT,

Respondent.

On Petition for Writ of Certiorari
To The Illinois Supreme Court

PETITION FOR WRIT OF CERTIORARI

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76 pp

Introductory Statement

The Illinois Supreme Court stripped Kenneth Kozel of his right to practice law in a one-sentence order saying, "Respondent is disbarred", without issuing an opinion or providing any other explanation for the court's ruling. Kozel was not allowed to file a brief in advance of the court's ruling, which is allowed all non-attoneys by Illinois Supreme Court Rule.

A unanimous Review Board of the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court (ARDC) recommended that Kozel be suspended from the practice of law for three years, overruling a recommendation of disbarment by a Hearing Board of the ARDC. Hearing Board and the Review Board recommendations are purely advisory. Kozel and the ARDC filed exceptions to the report of the Review Board with the Illinois Supreme Court, and the court allowed the exceptions of both Kozel and the ARDC.

Kozel was disbarred for the exercise of his Constitutionally protected right to freedom of expression rather than any misconduct. Kozel had filed pleadings in court on behalf of his clients to obtain a fair trial that alleged bias and prejudice against certain judges. The ARDC charged Kozel with violating a rule of professional conduct, and claimed the allegations were false or reckless statements involved the integrity of the judges. Kozel's pleadings were based on the subjective belief of his clients and of himself, in other words, subjective, not objective, opinion.

(a) Questions Presented for Review

Whether an attorney's allegations of bias and prejudice against judges on behalf of his clients are constitutionally protected by the First Amendment.

Whether an ttorney was denied due process and equal protection of the law and an opportunity to defend when the Illinois Supreme Court disbarred him with a three-word order ("Respondent is disbarred"), and neither issued an opinion nor provided him with an explanation.

Whether an attorney's disbarment in regard to allegations of bias and prejudice against judges on behalf of his clients was the result of unconstitutional selective prosecution.

Whether an attorney was denied due process and equal protection of the law when the Illinois Supreme Court disbarred him without allowing him to file a brief after the court had allowed the filing of his petition for leave to file exceptions.

Whether an attorney who was disbarred without being allowed judicial review as a matter of right in any court, was denied due process and equal protection of the law.

Whether an attorney's disbarment was predicated on alleged conduct during prehearing proceedings before a hearing board for which the attorney had never been charged and, therefore, was never given an opportunity to defend against.

Whether the Illinois Supreme Court denied an attorney due process and equal protection of the law when the court confirmed a recommendation of disbarment by hearing board members who were not judicially appointed officers.

Whether an order of disbarment entered by the Illinois Supreme Court is unenforceable because the judicial districts that comprise the Illinois Supreme Court are not in compliance with the one-man, one-vote requirement.

Whether *Illinois Supreme Court Rule of Professional Conduct 8.2(a)* is unconstitutionally void for vagueness and overbroad as interpreted in a disbarment proceeding.

Whether the punishment of disbarment for an attorney who alleged bias and prejudice against judges on behalf of his clients is unconstitutionally disproportionate and arbitrary and violated the attorney's right to due process and equal protection of the law.

(b) The caption of the case contains the names of all parties.

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(e) Basis for jurisdiction:

(i) June 30, 2000

(ii) August 11, 2000

(iii) Rule 12.5 is not applicable

(iv) Supreme Court Rule 10

(v) Rule 29.4(b) is not applicable. In regard to Rule 29.4(c), the appropriate agency, the Attorney Registration & Disciplinary Commission of the Illinois Supreme Court (ARDC), is a party.

(f) Constitutional provisions, statutes, etc.

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(g) Statement of the Case

The Review Board of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) found that Kenneth Kozel was licensed to practice law in Illinois in 1975. He served two years in the U.S. Army and was honorably discharged. He was married for 27 years and had three children. He

represented many people with little or no income. Appendix, p. 8. Kozel had never been disciplined or charged with any alleged misconduct by the Attorney Registration ant Disciplinary Commission of the Illinois Supreme Court (ARDC) until this proceeding was instituted in 1996.

The Review Board noted that most of the allegations made against Kozel related to allegations of bias and prejudice made in motions to substitute or disqualify judges in litigation. App. p. 3,6-7, 13. Illinois statute *735 ILCS 5/2-1001, Illinois Supreme Court Rule 63* and federal statute *28 USCS 455* allow such motions to be made by an attorney. App. p. 259-261, 261-267, 267-270). The ARDC had characterized the allegations of bias and prejudice as knowingly false statements concerning the integrity of the various judges in violation of Illinois *Supreme Court Rule of Professional Conduct 8.2(a)*. App. p. 208-244.

The Review Board got the case after a hearing board of the ARDC, consisting of two attorneys and a non-attorney appointed by the ARDC, recommended disbarment. Kozel was never questioned before the hearing board in regard to any of the allegations of bias. There was no proof elicited at the hearing that an allegation was false or that Kozel knew that an allegation may have been false. See App. p. 29-128.

There was a variance in the Hearing Board report between what was charged in each count of the complaint and the specific factual finding made in regard to each count. For example, Count 1 charged that Kozel had alleged that a judge disregarded procedural deficiencies and the rights of Kozel's client because the judge was afraid of the power of the

ARDC. The specific factual finding for Count 1 did not address this allegation and found Kozel guilty of misconduct that had never been charged. App. p. 29-128, 208-244.

The Review Board consisted of three attorneys and recommended a three-year suspension. The Review Board reversed the Hearing Board's findings in regard to Counts 9 and 10 and found error in the Hearing Board's failure to allow Kozel to present character testimony. The Review Board found that some of the allegations of judicial bias were justified and that Kozel had done pro bono work. App. p. 3-28. 153.

The Illinois Supreme Court denied Kozel's motion for an additional 35 days in which to file his petition for leave to file exceptions with the Illinois Supreme Court, and denied all subsequent motions to supplement the petition. App. Orders 1-25-00, 3-15-00, 3-28-00, 4-18-00, p. 1, 2; App. motions p. 188-190, 193-207. The Illinois Supreme Court allowed the ARDC additional time to answer Kozel's petition. App. Order 2-24-00, p. 1; App. motion 191-192.

The Illinois Supreme Court then disbarred Kozel with a three-word order that stated, "Respondent is disbarred." App. p. 130. The Illinois Supreme Court denied Kozel's motion to supplement the motion for reconsideration and rehearing and the motion for rehearing and reconsideration itself. App. Orders, 8-08-00 & 8-11-00, p. 129; App. motions 157-169.

The Review Board stated that this was an "unusual case. App. p. 6. The Review Board reviewed some of Kozel's allegations of judicial bias: a judge disregarded procedural deficiencies and the rights of

Kozel's client because the judge was afraid of the power of the ARDC (Count 1); a judge treated Kozel and his client differently from other attorneys and debtors and went along with alleged harassment of Kozel's client by a creditor (Count 3); a judge was racially biased and may have had a business relationship with an opposing side (Counts 4, 6 & 10); a judge had a referral relationship with opposing counsel when the judge was an attorney (Count 5); a judge was prejudiced because another judge had spoken to that judge about Kozel's client (Count 8). App. p. 13, 14.

The remaining allegations of judicial bias consisted of: a long-standing fee arrangement between opposing counsel and a judge's father that the judge admitted was true (Count 5) App. p. 14, 19-20; a judge who admitted he would not speak to Kozel (Count 7) App. p. 19-20; a disciplinary complaint filed with the ARDC by a client's mother-in-law against a judge when the judge was an attorney (Count 7) App. p. 83; a judge who admitted that his wife had fired Kozel's client from a radio station (Count 8) App. p. 96; a judge who overlooked legal irregularities by the clerk of the judge's court because of political affiliation (Counts 9 & 11). App. p. 100, 102. A reference to a judge as "an old prosecutor" that was never made as an allegation of bias, but rather as an acknowledgment of reality (Count 2). App. p. 43.

The Review Board acknowledged that Kozel did not publicize any allegations of judicial bias outside of the courtroom or try to intimidate or influence any judge. App. p. 25. The Review Board also acknowledged instances in which a judge disqualified himself after Kozel filed a motion, and that a judge had

admitted that he never spoke to Kozel unless a court reporter was present. App. p. 14, 19-20.

Count 4 charged Kozel with making a frivolous objection, objecting to opposing counsel's use of a facsimile signature rather than an original signature on an appellate brief. App. p. 10. The Review Board hinted that Kozel had a legitimate basis for this objection but ignored the case of *Bachman v. Kent*, 293 Ill. App. 3d 1078 (1st Dist. 1997), that held that an original signature is required on all court documents. App. p. 15.

Two other counts did not involve allegations of judicial bias. Count 12 involved an appearance before a court without being admitted eight years earlier in 1988. Kozel claimed he was admitted and that the record of admission had been misplaced. An Inquiry Panel of the ARDC had closed the matter without authorizing charges eight years earlier in 1990. The Review Board found ambiguities in the record in regard to this count. App. p. 22.

Count 13 involved a client's worker's compensation case that originally had been filed by another attorney. The case was dismissed for want of prosecution, but the case was reinstated and the client did receive an agreed settlement. The Review Board noted an issue in whether Kozel was aware of the date of the hearing. App. p. 13.

(i) Federal Questions

The Illinois Supreme Court alone exercises disciplinary power over lawyers. Disciplinary proceedings are original proceedings in the Illinois Supreme Court. *In Re Harris*, 93 Ill. 2d 285 (1982).

The members of the Hearing Board and the Review Board of the Attorney Registration and Disciplinary Commission of the Illinois Supreme Court are not judicial officers. The Hearing Board and the Review Board are fact-finding bodies only, their recommendations are purely advisory and their functions do not constitute a delegation of judicial power. *In re Roth*, 398 Ill. 131 (1947).

Federal questions were raised in the Illinois Supreme Court in the following documents: petition for leave to file exceptions, App. p. 170-172; answer to Administrator's petition for leave to file exceptions, App. 172-173; motion for reconsideration and rehearing, App. 157-164; motion for leave to file amendment to motion for reconsideration and rehearing, App. 165-169.

The Illinois Supreme Court did not pass on the federal questions and entered an order without an opinion on 6-30-00, that stated, "Respondent is disbarred," App. 130; an order on 8-08-00 denying leave to file an amendment to a motion for reconsideration and rehearing, App. 129; and an order on 8-11-00 denying the motion for reconsideration and rehearing, App. 129.

(g) Argument

1. Kenneth Kozel's allegations of bias against judges are constitutionally protected by the First Amendment. The allegations are statements of opinion that can neither be proved true or false and do not imply dishonesty. The Illinois Supreme Court's order of disbarment conflicts with the decision of a U.S. Court of Appeals and with the decisions of the U.S. Supreme

Court. A U.S. Court of Appeals has issued a decision in conflict with another U.S. Court of Appeals.

The Review Board correctly held that statements of opinion by attorneys are constitutionally protected, citing *Owen v. Carr*, 113 Ill. 2d 273 (1986). App. 21. The Review Board correctly held that "attorneys can legitimately criticize a judge and disagree with his or her rulings." App. p. 21.

The Review Board noted that the Hearing Board relied on a matter involving Attorney Jafree when it recommended that Kenneth Kozel be disbarred. App. p. 25. Jafree sued on behalf of all trees in the United States. He sued various law schools seeking to have law degrees awarded to him nunc pro tunc. Kozel never made similar statements, and was never charged with making similar statements in any count of the Second Amended Complaint. App. p. 208-244.

The Review Board distinguished Jafree from Kozel. Jafree made a career of abusing the judiciary. In contrast, Kozel appeared before the same judges in other cases without incident or problem. The Review Board found that some of Kozel's allegations of bias against judges had a colorable basis. The Review Board acknowledged instances in which judges were biased against Kozel or his client. The Review Board found that Kozel did not publish anything about a judge in the press and did not attempt to intimidate and influence any judge. App. p. 25-27.

The Review Board noted that the Hearing Board relied on one other matter when it recommended that Kozel be disbarred. This matter involved Attorney Palmisano. App. p. 25.

After a judge criticized his style of dress, Palmisano submitted a brief to the judge that included a hypothetical in which an attorney shot a judge dead after the judge had criticized the attorney's style of dress. Palmisano appeared outside the Daley Center Courthouse in Chicago and passed out handbills stating that Judge Frank Siracusa was a crook. Palmisano referred to Siracusa as "Frank the crook" and "Frank the fixer." He referred to Judge Lewis as "another crook," and to Judge Pecarrelli as "a crooked judge." He made references to: "the judge's syndicate," "a crooked judge who fills the pockets of his buddies," "a judge who is stealing," and "a judge who was corrupting the system and was crooked." He referred to Appellate Justices Unverzagt, Inglis and Dunn as dishonest. Palmisano accused other judges of being crooks, fixers and dishonest. See *In Re Palmisano*, 70 F.3d 483 (7th Cir. 1995).

The Review Board distinguished Palmisano from Kozel because Palmisano had accused judges of criminal wrongdoing. App. p. 25. Kozel never accused any judge of criminal wrongdoing, and was never accused of making any such statements in any count of the Second Amended Complaint. App. p. 208-244.

The U.S. Court of Appeals for the Seventh Circuit found no First Amendment protection for Palmisano's statements about judges. *In Re Palmisano*, 70 F.3d 483 (7th Cir. 1995). A case that conflicts with the Palmisano case is *Standing Committee on Discipline v. Yagman*, 55 F.3d 1430 (9th Cir. 1995). Yagman had referred to a U.S. District Court Judge as having a penchant for sanctioning Jewish lawyers, and as being dishonest, drunk on the bench, ignorant, ill-tempered, a bully, a buffoon, a sub-standard human, a right-wing

fanatic, the worst judge in the Central District and probably one of the worst judges in the United States.

The Standing Committee on Discipline for the U.S. District Court for the Central District of California found that Yagman had violated District Court Rule 2.5.2 and impugned the integrity of the judge and interfered with the administration of justice. The Standing Committee suspended Yagman from the practice of law for two years.

The Ninth Circuit Court of Appeals reversed the suspension order, and held that that attorneys who make statements about judges are entitled to First Amendment protection. A statement of opinion concerning a judge is protected by the First Amendment, even though Yagman had accused the judge of being dishonest. Yagman's description of the judge as "dishonest, was construed as "intellectually dishonest" by the Ninth Circuit.

The Ninth Circuit in Yagman stated that prejudice to the administration of justice must be highly likely before speech will be punished. The court held that the mere possibility or probability of harm to the administration of justice does not amount to a clear and present danger, and is not enough. The danger must immediately peril the administration of justice. The substantive evil must be extremely serious and the degree of imminence must be extremely high before utterances can be punished under the First Amendment. No such prejudice, danger or substantive evil was ever specifically identified by the Hearing Board, Review Board or the Illinois Supreme Court in Kozel's case. App. p. 3-28, 29-128, 130.

The First Amendment provides that freedom of speech shall not be abridged. App. p. 132. The right to free speech cannot be abridged or censored unless the utterance or expression is of such a nature as to create a clear and present danger of bringing about the substantive evils the government has a right to prevent. *Schenck v. U.S.*, 249 U.S. 47, 52 (1919). Such a danger must rise above public inconvenience, annoyance or unrest. *Terminello v. Chicago*, 337 U.S. 1 (1949).

The Ninth Circuit's opinion in *Yagman* conflicts with the opinion of the Seventh Circuit in the *Palmisano* case. The Ninth Circuit held that Yagman's statements about the judge were protected by the First Amendment, even the accusation of dishonesty.

The Review Board declined to follow the holding in the *Yagman* case and apply it to Kozel's case. App. p. 21. The disciplinary rule used to prosecute Yagman, District Court Rule 2.5.2, is similar to *Illinois Supreme Court Rule of Professional Conduct 8.2(a)*, which was used to prosecute Kozel. App. p. 152 *Yagman*, 55 F.3d 1430. In any event, the allegations of bias against judges that Kozel is alleged to have made, did not involve theft, corruption or dishonesty, as in the Palmisano and Yagman cases. Kozel's statements are protected by the First Amendment.

2. When the Illinois Supreme Court disbarred Kozel with a three-word order ("Respondent is disbarred") and neither issued an opinion nor provided him with an explanation, he was denied due process and equal protection of the law. Practically speaking, Kozel's license was taken without an opportunity to defend.

The Illinois Supreme Court's order of disbarment conflicts with the decisions of a U.S. Court of Appeals and with the decision of the U.S. Supreme Court on an important federal question.

A. Before the Illinois Supreme Court can disbar an attorney, reasons for the disbarment must be provided.

In the Federal Courts, *Federal Rule of Civil Procedure 52* and *Bankruptcy Rule 7052* mandate that it is a court's duty to make findings of fact and conclusions of law. App. p. 135-136. The purpose is to provide a court of review and the litigants with a clear understanding of the underlying judgment, and to avoid prejudice to the litigants. A court of review is entitled to a clear basis for the decision of the underlying court. *Brown v. Quinlan*, Inc., 138 F2d 228 (7th Cir. 1943); *Feeley v. U.S.*, 337 F2d 924 (3d Cir. 1964); *Leighton v. One William Street Fund, Inc.*, 343 F2d 565 (2d Cir. 1965); *In Re Metropolitan Realty Corp.*, 433 F. 2d 676 (5th Cir. 1970), cert. Denied 401 US 1008.

The punishment of disbarment of an attorney means, for all practical purposes, the destruction of his professional life, reputation and livelihood. The Illinois Supreme Court should proceed with caution and moderation. The record must be free from doubt, not only as to the act charged, but also as to the motive with which it was done. *In re Heirich*, 10 Ill. 2d 357 (1956); *In Re Harris*, 93 Ill.2d 285, 1982; *In Re Donaghy*, 402 Ill. 120 2d (1948).

On June 30, 2000, the Illinois Supreme Court allowed the Petitions for Leave to file Exceptions of Kenneth Kozel and of the Administrator of the ARDC, yet at the same time disbarred Kozel without an explanation or by issuing an opinion. The order stated simply, "Respondent is disbarred." App. p. 130.

The Review Board previously recommended a suspension and overruled the Hearing Board's recommendation of disbarment. The Review Board filed a unanimous 20-page supporting opinion with reasons supporting a suspension and not disbarment. App. p. 3-28. The Illinois Supreme Court did not provide any reasons as to why the decision of the Review Board should not be accepted, or why the Kenneth Kozel should be disbarred.

B. Because the Illinois Supreme Court acted without explanation, it deprived Kozel of his right to further appeal to the United States Supreme Court.

An attorney in an attorney discipline case has the right to seek further review in the United States Supreme Court of an order entered by the Illinois Supreme Court. *Rule 10*, App. p. 131. As a result, the Illinois Supreme Court had a duty to issue a full opinion and provide reasons for the disbarment of the respondent so that the U.S. Supreme Court would have a clear understanding of its order. This is especially true in this case where the Illinois Supreme Court granted both parties leave to file exceptions and overturned the 20-page opinion of the Review Board.

The perfunctory order of disbarment entered by the Illinois Supreme Court denied the respondent due process of law under the Fourteenth Amendment of the United States Constitution because the Illinois Supreme Court failed to issue a full opinion, failed to provide any reasons for disbarment, failed to provide any reasons why the unanimous opinion of the Review Board should not be accepted and provided a three-word opinion ("Respondent is disbarred") that is unreviewable by the U.S. Supreme Court. App. p. 132.

In February of 2000, the American Bar Association took aim at thousands of opinions that were decided with one-word rulings, like "Affirmed." An ABA resolution has called upon all reviewing courts to provide "at a minimum, reasoned explanations for their decisions." App. p. 245-248.

The Illinois Supreme Court has issued a great number of opinions in disbarment cases through the years in which the court has provided reasons for the disbarment of an attorney. App. p. 174-182. The Illinois Supreme Court denied Kenneth Kozel equal protection of the law under the Fourteenth Amendment of the United States Constitution by issuing an opinion in all these other disbarment cases and providing reasons for disbarment, but not issuing an opinion in Kozel's case and not providing any reasons for his disbarment. App. p. 132.

Supreme Court Rule 753(e)(5)(i) provides that the Illinois Supreme Court can enter a final order as recommended by the Review Board or "as otherwise determined by the court. App. p. 137-144.

The words, "as otherwise determined by the court." are unconstitutional as applied in Kenneth Kozel's case. The Illinois Supreme Court's three-word order ("Respondent is disbarred") denied Kozel a full opinion and reasons for disbarment, and denied him reasons why the Illinois Supreme Court overturned decision of the Review Board. The three-word order is also unreviewable by the U.S. Supreme Court. By applying *Rule 753* in this fashion, the Illinois Supreme Court denied Kenneth Kozel due process and the equal protection of the law under the Fourteenth Amendment of the U.S. Constitution. See App. p. 132.

3. Kenneth Kozel was selectively prosecuted in regard to allegations of bias against judges and was denied due process and equal protection of the law. The Illinois Supreme Court's order of disbarment conflicts with a decision of a U.S. Court of Appeals and with a decision of the U.S. Supreme Court.

There is a recognized constitutional right to be free from selective prosecution on the basis of speech and being denied the equal protection of the law. *Wayte v. U.S.* 470 U.S. 598 (1985). A two-pronged test is involved for selective discrimination. (1) It must be demonstrated that a certain person was singled out for prosecution while others similarly situated have not been prosecuted for conduct similar to that for which the certain person was prosecuted. (2) It must be demonstrated that the discriminatory selection of the certain person was based on the right to free speech. *Moss v. Freeman,* 604 F. 2d 569 8th Cir. (1979).

Kenneth Kozel was selectively prosecuted in regard to allegations of bias against judges. He was accused of violating *Illinois Supreme Court Rule of Professional Conduct 8.2(a)* and impugning the integrity of judges. App. 152.

The Review Board noted that Kozel's allegations were not publicized in the press. App. p. 25. In contrast, eye-opening statements about judges made by prominent and connected attorneys, using extremely harsh and offensive language, have been publicized in the press. The Administrator of the ARDC has not filed a single complaint against any of the Illinois attorneys who made the following statements.

Attorney David I. Grund referred to Cook County Circuit Judge Patricia Banks as "a disgrace" and as "an embarrassment", and that her ruling in a

case was "certainly influenced by the immense power" of one of the litigants and "didn't involve the facts or the law." App. p. 201-207.

Attorney Joseph R. Martan wrote a letter to the editor of the Chicago Daily Law Bulletin, that contained the following statements about Illinois judges: "Whining state judges... The Illinois Judges Association is hardly the most objective professional group"... too many state judges never had the law school record that would have gotten them hired as an associate at one of the prestige firms"... How many state judges, serving or now off the bench, were Order of the Coif or Law Review editors?... how many state judges have spent any appreciable time in private practice?"... how many state judges put in the 70 to 90-hour weeks expected of associates at the prestige firms in exchange for the exalted salaries? Not many, based on my on my private practice experience." App. p. 193-200.

Attorney Timothy P. O'Neill published a column in which he wrote that the U.S. Supreme Court's "paltry output of 75 opinions makes an appointment to the Supreme Court look like a prestigious form of early appointment." App. p. 252.

Regarding the infamous "Baby Richard case" issued by the Illinois Supreme Court and written by Justice Heiple *(In re Petition of Doe,* 159 Ill. 2d 347, 1994), Attorney Jerald Solovy accused the Justices of the Illinois Supreme Court of basing their decision on information that was "made up out of thin air." He said the justices "were mad at my clients". App. p. 249. Solovy also stated that, "I'm astounded at the swiftness of the decision and by the decision itself. It's contrary

to all Illinois precedent and to all notions of a civilized society." App. p. 249.

Regarding the same case, Attorney Patrick Murphy, Cook County Public Guardian, said, "These justices are out of control. This is a scene that I could not envision in my worst possible nightmares. This is probably the greatest proof in the world of the foolhardiness of an elected judiciary" App. p. 249.

Regarding the same case, Attorney Daniel Polsby, a law school professor at Northwestern University, referred to the Illinois Supreme Court Justices as, "Pretty actresses who can't act. I can't say that these Bozos are incompetent, but then you read the Baby Richard case." App. p. 251.

Attorney Ronald Rotunda, a law professor at the University of Illinois, on Illinois Supreme Court Justice Heiple: "Heiple's opinions just don't seem to be logical. His style is very petulant"... "One can disagree with an appellate judge without attacking him personally. If an attorney wrote in his brief the same language that the judge wrote in the (Baby Richard) opinion, a lot of judges would criticize the attorney... in the Baby Richard case he attacked Judge Rizzi, the Governor, the Legislature..." App. p. 250.

Attorney Thomas Demetrio on Justice Heiple: "I believe it to be unbecoming for a member of the judiciary to gratuitously exhibit his bias against plaintiff's personal injury lawyers in a published opinion." App. p. 250.

Attorney C. Steven Tomashefsky on Justice Heiple:

"Justice James D. Heiple's recent statement regarding his encounter with the Pekin Police Department is a

discredit to the Supreme Court... Justice Heiple's statement -- issued we understand, on official Supreme Court stationery through the court's official spokesperson -- raises serious questions about his ability to be fair in criminal cases coming before the court." App. p. 252.

Attorney Kathleen L. Roach, President of the Chicago Council of Lawyers, attacked Justice Heiple for using "old fashioned political patronage" in his appointment of Judith Koehler to the Third District Appellate Court. App. p. 253-4.

Attorney C. Stephen Tomashefsky: "When high caliber judges are elected, it's by accident". App. p. 253.

Attorney C. Stephen Tomashefsky on the election of Judge Hopkins: "I've got to assume that she did something in her community that attracted attention to her. With subcircuits, it's often something other than your legal ability." App. p. 253.

Attorney Christine Heins commented about an appellate opinion: "This is a rogue decision." App. p. 251.

While on the Third District Appellate Court, Justice Heiple dissented in the case of Prewein v. Caterpillar Tractor Co., 123 Ill. App. 3d 687, and stated: "... Modernity, however, has brought us a substitute tool for divining mysteries and future trends. It is called the Illinois Supreme Court. While opinions to its efficacy are not uniform, some say it is as reliable as bird entrails."

Certain statements about judges were made in television and radio commercials during the recent campaign for the Illinois Illinois Supreme Court. A

television commercial that aired on behalf of Appellate Justice Morton Zwick, a candidate, had this to say about Judge Thomas Fitzgerald, another candidate:

"Courts under Fitzgerald sent innocent men to death row while killers walk the streets. Illinois becomes the only state to stop executions. The Tribune calls it a chilling spectacle of criminal justice gone terribly wrong. And Fitzgerald wants a promotion to the Supreme Court. We deserve better." App. p. 193-195.

The commercial contained a picture of Judge Fitzgerald accompanied by the phrase, "Presiding Judge of a broken system." App. p. 193-194

In a commercial that recently aired on WGN Radio on behalf of Appellate Justice Bob Thomas, it was stated that "Judge Bonnie Wheaton is not telling the truth." App. p. 193-195.

In a commercial that recently aired on WGN Radio on behalf of Judge Bonnie Wheaton, it was stated that "Judge Bob Thomas is running a smear campaign." App. p. 193-195.

Even Justices of the Illinois Supreme Court themselves have made statements about each other and other justices that far exceed Kozel's allegations of bias in regard to judges.

In the order denying rehearing in the Baby Richard case (In re Petition of Doe, 159 Ill. 2d 347, 1994), Illinois Supreme Justice Heiple stated,

"Justice Rizzi grossly distorted the law... Any judge, lawyer, or guardian ad litem who has even the most cursory familiarity with adoption laws knows that (a child is not available for adoption until the rights of his natural parents have been properly terminated)...

Justice Rizzi, if he is to be taken at face value, does not know that."

Illinois Supreme Court Justice Miller, with Justices Freeman and McMorrow specially concurring, in the case of People v. Bull, 185 Ill. 2d 179 (1998), stated:

" ... Contrary to (Illinois Supreme Court Justice Harrison's) admonition in Zimmerman, however, Justice Harrison frequently chooses, as he does in this case, to impugn the integrity of other members of the court and to impute improper motives to those with whom he disagrees. Thus, at various times, he has characterized majorities of this court as enemies of labor unions (181 Ill. 2d 191, 211-12) (173 Ill. 2d 299, 342), as foes of children (173 Ill. 2d at 337), (171 Ill. 2d 378, 393-94) (169 Ill. 2d 110, 128) as biased against plaintiffs in civil actions (76 Ill. 2d 171, 178), and even as vigilantes (175 Ill. 2d 1, 60)... Baseless and unfounded imputations of improper motives to those members of the court who support a majority opinion are unjustified and demean the court... We cannot prescribe civility to members of the bar when our own opinions are disfigured by comments as offensive as those we have admonished lawyers for making. See, e.g., Kidd, 175 Ill. 2d at 53-54. We should receive no less from our colleagues than we expect from lawyers who appear in our courts."

The Administrator of the ARDC has not filed a single complaint against any of the above attorneys, judges or justices for making publicized statements about judges that greatly exceeded any allegation of

bias Kozel made in regard to a judge. The two-pronged test has been met in regard to the selective prosecution of Kozel.

4. Kenneth Kozel was denied due process and the equal protection of the law when the Illinois Supreme Court disbarred him without allowing him to file a brief after the Illinois Supreme Court had allowed the filing of his petition for leave to file exceptions.

In any case on review to the Illinois Supreme Court, other than an attorney discipline case, when a petition for leave to appeal is allowed by the Illinois Supreme Court, the petitioner, as a matter of right pursuant to Supreme Court Rule 315(g), is given the option (1) of allowing his petition for leave to appeal to stand as his appellant's brief or (2) of filing a brief in lieu of his petition for leave to appeal or as a supplement, before the Illinois Supreme Court decides the merits of the case and issues an opinion. App. p. 145-151.

A petition for leave to file exceptions in an attorney discipline case is the equivalent of a petition for leave to appeal filed by non-attorneys seeking review by the Illinois Supreme Court. However, when a petition for leave to file exceptions in an attorney discipline case is allowed by the Illinois Supreme Court, as it was in Kenneth Kozel's case, *Supreme Court Rule 753(e)(5)(a)(iii)* provides that the attorney's petition for leave to file exceptions "shall stand as the brief of the appellant." App. p.142-143.

Supreme Court Rule 753(e)(5)(a)(i) and (a)(iii), as applied by the Illinois Supreme Court in this case, denied Kenneth Kozel the second option allowed all others (non-attorneys) as a matter of right, of filing a

brief in lieu of his petition for leave to file exceptions or as a supplement, before the Illinois Supreme Court decided the case and entered its disbarment order of June 30, 2000.

Denying Kenneth Kozel the right allowed all other non-attorneys to file a brief as a matter of right after his petition for leave to file exceptions had been allowed by the Illinois Supreme Court, constituted a denial of due process and the equal protection of the law under the Fourteenth Amendment of the U.S. Constitution. App. p. 132.

5. Kenneth Kozel was disbarred without being allowed judicial review as a matter of right in any court, and was thereby denied due process and equal protection of the law. The Illinois Supreme Court's order of disbarment conflicts with the decision of the U.S. Supreme Court on an important federal question.

An attorney is the only profession in Illinois that is denied judicial review in the state Circuit and Appellate Courts as a matter of right from an administrative proceeding to terminate a professional license. All other professions in Illinois are allowed judicial review as a matter of right in the state Circuit and Appellate Courts from an administrative proceeding to terminate a professional license. App. p. 183-184.

When the *Illinois Supreme Court Rule of Professional Conduct 753* became effective on February 1, 1973, the rule provided for an administrative hearing board composed of attorneys, an administrative review board composed of attorneys, and for judicial review as a matter of right to the Illinois Supreme Court from the decision of the review board.

This all changed effective November 1, 1990. The Illinois Supreme Court revised *Rule 753*. An attorney is now denied judicial review as a matter of right in the Illinois Supreme Court in a disbarment proceeding from the decisions of the hearing and review boards.

Rule 753 not only denied Kozel review as a matter of right in the Illinois Supreme Court from the administrative hearing and review board decisions, it also denied review as a matter of right in the state Circuit and Appellate Courts from the hearing and review board decisions.

If Kozel had been allowed judicial review as a matter of right in the Illinois Supreme Court, he would have been allowed to file a brief and would have been afforded oral argument. *Rule 753* denied him those rights. As a result Kozel was disbarred without any judicial review as a matter of right.

The Illinois Supreme Court entered its order, "Respondent is disbarred" without any explanation. There is no way of telling what Kenneth Kozel was disbarred for. The Illinois Supreme Court could very well have disbarred Kozel for uncharged misconduct. The Review Board noted that an attorney cannot be disbarred for uncharged misconduct. *In Re Ruffalo*, 390 U.S. 544 (1968). App. p. 24.

Attorneys now stand alone as the only profession in Illinois denied judicial review as a matter of right in a proceeding to terminate a professional license. Even boxers, wrestlers and nail technicians are allowed judicial review as a matter of right in the state Circuit and Appellate Courts from an administrative

proceeding. App. p. 183-4. Attorneys are denied this right.

Illinois Supreme Court Rule of Professional Conduct 753 denied Kenneth Kozel due process and equal protection of the law under the Fourteenth Amendment of the U. S. Constitution. App. p. 132.

6. Kozel's disbarment was predicated on alleged conduct during prehearing proceedings before the Hearing Board for which he'd never been charged and, therefore, never given an opportunity to defend against, contrary to rulings from the United States Supreme Court. The Illinois Supreme Court's order of disbarment conflicts with decisions of the U.S. Supreme Court on an important federal question.

The Hearing Board waited until it issued its report to charge Kozel with filing frivolous pleadings, not cooperating and being obstructionist during prehearing proceedings. App. 153. The Hearing Board then considered these findings in aggravation and disbarred Kozel. App. p. 126-8.

Any alleged frivolous pleading, lack of cooperation or obstructionism on Kozel's part during prehearing proceedings before the hearing board, should have been dealt with at that time by affording Kozel notice, a hearing and an opportunity to respond. A good analogy is *Federal Rule of Civil Procedure 11*, where notice, hearing and a response are required prior to the imposition of a sanction. App. p. 256-8.

Post-trial proceedings before the hearing board are prohibited by *Attorney Registration & Disciplinary Rule 284*, so there was no way for Kozel to take any action whatsoever before the hearing board in regard to the charges.

All of the Hearing Board's accusations regarding Kozel's conduct were conclusory in nature, other than an instance in which it claimed that Kozel's objection to a prehearing conference by telephone was "absurd and filed without any investigation." App. p. 126-8. The Hearing Board was simply mistaken.

Attorney Registration & Disciplinary Rule 260(a) and (c) provide that the Administrator and the respondent attorney shall attend prehearing conferences. *Rule 260(e)* provides that a status conference may be held by phone. App. p. 155-6. The chairman of the hearing board scheduled a prehearing conference by telephone. Kozel objected because *ARDC Rule 260(a)* does not provide for a prehearing conference by telephone. The hearing board report deemed this an "absurd" objection. App. p. 126-8.

The Hearing Board claimed in its report that there is no requirement that prehearing conferences be held in person, other than the initial prehearing conference. App. p. 126-8. This is not correct. *Rule 260* does not state that pre-hearing conferences can be held by telephone. The only conferences that can be held by telephone are status conferences.

The ARDC has now proposed changing *ARDC Rule 260* to allow for prehearing conferences by telephone as well as in person. The ARDC has also proposed changing *Rule 261*, which would allow an attorney to substitute a hearing board member for cause, as is common is judicial proceedings. App. p. 154.

Kozel's pleadings during prehearing proceedings before the hearing board were well founded. The Administrator's complaint was

dismissed twice after Kozel filed motions to dismiss. App. Second Amended Complaint, p. 208-244,

Kozel did cooperate during prehearing proceedings before the hearing board. The degree of "cooperation" required of an attorney in a disciplinary matter is not defined by rule. There are only two sources that remotely describe what is required of an attorney in a disciplinary proceeding. Attorney *Registration & Disciplinary Rule 53* does not use the word, cooperation, and only requires that an attorney respond by letter to the Administrator's request for information, which Kozel did. *Supreme Court Rule 753(f)* does not use the word, cooperation, either and only requires an attorney to appear at any hearing in which his presence is required or requested, which Kozel did.

The Illinois Supreme Court has never elaborated on what is required in the way of "cooperation." *In re Samuels*, 126 Ill. 2d 509 (1989); *In re Zisook*, 88 Ill. 2d 321 (1981). Kozel had no way of knowing what was expected of him in regard to cooperation. The net effect was that Kozel was denied due process and the equal protection of the law under the 14th Amendment and disbarred for uncharged misconduct. An attorney cannot be disbarred for uncharged misconduct. *In Re Ruffalo*, 390 U.S. 544 (1968). App. p. 24.

7. The Illinois Supreme Court denied Kozel due process and the equal protection of the law when the court confirmed a recommendation of disbarment by Hearing Board members who were not judicially appointed officers.

Hearing Board members in Kenneth Kozel's case, were two attorneys and a non-lawyer, appointed

by the Attorney Registration and Disciplinary Commission and selected by the Administrator pursuant to Supreme Court Rule 753(c)(1). App. p. 137-138.

The members of the Hearing Board were non-judicial officers because they were appointed by non-judicial officers. As non-judicial officers, the hearing board members were performing judicial acts, contrary to Illinois law and the United States Constitution.

The application of Supreme Court Rule 753(c)(1) to Kenneth Kozel's case, which provides for the appointment of non-judicial officers to the Hearing Board and the apparent adoption of their recommendation for disbarment by the Illinois Supreme Court, denied Kenneth Kozel due process and the equal protection of the law under the Fourteenth Amendment. App. p. 132.

8. The judicial districts that comprise the Illinois Supreme Court are not in compliance with the one man-one vote requirement.

The judicial districts that comprise the Illinois Supreme Court are not in compliance with the federal requirement of one-man, one-vote. *Voting Rights Act of 1965, Section 2, 42 USC 1971.* App. p. 133-134.

According to the 1990 census, the Third Supreme Court District in which Kozel resides, is 8.5% below equality, the Fourth District is 21.9% below equality and the Fifth District is 19.3% below equality. App. p. 185-187. The Second District has nearly 50% more residents than it would have if all four downstate districts were equal.

As a result, the order of disbarment against Kozel is not enforceable since the judicial districts that

comprise the Illinois Supreme Court are ~~not~~ in compliance with the one-man, one-vote requirement.

9. Illinois Supreme Court Rule of Professional Conduct 8.2(a) is unconstitutionally void for vagueness and overbroad as interpreted. The Illinois Supreme Court's order of disbarment conflicts with the decisions of the U.S. Supreme Court on an important federal question.

In the case of *Gentile v. State Bar of Nevada*, 501 U.S. 1030 (1991), a defense attorney held a press conference prior to trial in regard to a criminal case. He stated that the likely perpetrator was a police detective rather than his client, and that certain witnesses were drug dealers and convicted money launderers. The Nevada Supreme Court found that Gentile's statements materially prejudiced the trial in which the attorney's client was acquitted, and disciplined the attorney for making the statements. The U.S. Supreme Court found that the Nevada disciplinary rule prohibiting attorney's extrajudicial statements was unconstitutional and void for vagueness as interpreted, and reversed the order of discipline entered by the Nevada Supreme Court.

Illinois Supreme Court Rule of Professional Conduct 8.2(a) is similar to the Nevada disciplinary rule, and is also void for vagueness as interpreted. *Rule 8.2(a)* states that a lawyer shall not make a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. App. p. 152. *Rule 8.2(a)* does not define integrity, provides no examples of what is prohibited, and provides no insight or guidance whatsoever into what types of statements are prohibited. Rule 8.2(a) unquestionably vague.

When you look up the word "integrity", the American Heritage Dictionary tells you to "see synonyms for honesty." Kozel never accused any judge of being dishonest, as is apparent from the allegations of the Second Amended Complaint. App. p. 208-244. The Review Board acknowledged that Kozel never accused any judge of criminal wrongdoing. App. p. 25.

Rule 8.2(a) is unconstitutional and void for vagueness as interpreted in the case of Kenneth Kozel. *Rule 8.2(a)* has been used unconstitutionally by the state to disbar Kozel and censor harmless allegations of bias against judges that were necessary to obtain fair hearings for Kozel's clients. If the federal government cannot censor an attorney's speech, neither can state government. *Gary Peel v. ARDC*, 496 U.S. 91 (1990).

10. The punishment of disbarment for alleging bias against a judge is unconstitutionally disproportionate and arbitrary and violated Kenneth Kozel's right to due process and equal protection of the law.

The Review Board compared Kozel's allegations of bias regarding judges to four other attorneys, Phelps, Mason, Standidge and Sarellas. App. p. 26.

Attorney Phelps sued two judges in state court for money damages. She sued a judge in federal court for $250,000.00. She accused the judges of illegal acts. Kozel never sued any judges and never accused any judges of illegal acts. App. 208-244. Attorney Phelps received a two-year suspension and until further order. *In re Phelps*, 55 Ill. 2d 319 (1973).

Attorney Mason sued a judge and thirteen other defendants for over four million dollars as a pro se plaintiff. He accused judges of illegal acts and sought

huge headlines from the press about suing judges. Kozel was never accused of doing anything like this. App. p. 208-244. Attorney Mason received a suspension of one year. *In re Mason*, 33 Ill. 2d 53 (1965).

Attorney Standidge sued three appellate court justices for $100,000.00 as a pro se plaintiff. He accused the justices of acting corruptly. Kozel was never charged with suing justices or accusing them of acting corruptly. App. p. 208-204. Standidge was suspended for six months. *In re Standidge*, 333 Ill. 361 (1928).

Attorney Sarellas looks like he might hold the all-time record for suing judges and lawyers for money damages as a pro se plaintiff, at least thirteen lawsuits. He sued eight lawyers for $100,000.00. He sued two lawyers for $300,000.00 and alleged corruption. He sued seven lawyers in another case. He sued the Greek Consul General for $100,000.00. He sued a master in chancery twice, once for $200,000.00 and once for $300,000.00. He sued thirteen lawyers for $200,000.00. He sued a judge of the superior court for $200,000.00. He sued an attorney twice for $300,000.00, once in state court and once in federal court, and another time in federal court for $600,000.00. He sued the ex-president of the Chicago Bar Association for $600,000.00. Kozel was never charged with doing anything like this. App. p. 208-244. Sarelas received a two-year suspension and until further order. *In re Sarelas*, 50 Ill. 2d 87 (1971).

Attorney Roberto Cisneros, Jr., was recently convicted of three felony counts of aggravated sexual abuse of a fifteen-year-old girl. Kozel has never been convicted of any felony, let alone three felony counts of aggravated sexual abuse of fifteen-year-old girl.

Cisneros received a three-year suspension. In re Cisneros, M.R. 15558 (1999). App. p. 255.

The Review Board noted that the Hearing Board had compared Kozel to Attorneys Jafree and Palmisano when it recommended that Kozel be disbarred. App. p. 25.

The Review Board distinguished Jafree from Kozel. *In re Jafree*, 93 Ill. 2d 450 (1982). Jafree made a career of abusing the judiciary. In contrast, the Review Board found that Kozel had appeared before the same judges in other cases without incident or problem. It also found that some of Kozel's allegations of bias against judges had a colorable basis. The Review Board acknowledged instances in which judges were biased against Kozel or his client. The Review Board found that Kozel did not publish anything about a judge in the press and did not attempt to intimidate and influence any judge. App. p. 25-27.

The Review Board distinguished Palmisano from Kozel. *In Re Palmisano*, 70 F.3d 483 (7th Cir. 1995). Palmisano had accused judges of criminal wrongdoing. Kozel never accused any judge of criminal wrongdoing and was never accused of making any such statements in the Second Amended Complaint. App. p. 25, 208-244.

The punishment of disbarment for alleging bias against a judge is unconstitutionally disproportionate and arbitrary and violated Kenneth Kozel's right to due process and equal protection of the law under the Fourteenth Amendment. App. p. 132.

Kenneth A. Kozel, 801 Second Street, LaSalle, IL 61301 (815) 223-4400

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NO.

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH A KOZEL,

Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari
To The Illinois Supreme Court

APPENDIX, VOLUME 1

KENNETH A. KOZEL
PETITIONER
801 SECOND STREET
LA SALLE, IL 61301
(815) 223-4400

STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel
M.R. 16530
Attorney Registration and
Disciplinary Commission 96 CH 50

Motion by Kenneth Alan Kozel for an extension of time to and including March 9, 2000, to file petition for leave to file exceptions to the report and recommendation of the Review Board. Motion denied.

Order entered by Justice Heiple. January 25, 2000

STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel
M.R. 16530
Attorney Registration and
Disciplinary Commission 96 CH 50

The motion by the Administrator of the Attorney Registration and Disciplinary Commission for an extension of time to and including March 23, 2000, to file her answer to Kenneth Alan Kozel's petition for leave to file exceptions is allowed.

Order entered by Justice Heiple. February 24, 2000

M.R. 16530
STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel) Attorney-Registration and
Attorney - Respondent) Disciplinary Commission

ORDER

Motion by Kenneth Alan Kozel for leave to file supplement to petition for leave to file exceptions. Motion denied.

Order entered by Justice Heiple. March 15, 2000

M.R. 16530
STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel) Attorney-Registration and
Attorney - Respondent) Disciplinary Commission

ORDER

Motion by Kenneth Alan Kozel for leave to file second supplement to petition for leave to file exceptions and to supplement the record. Motion denied.

Order entered by Justice Heiple. March 28, 2000

M.R. 16530
STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel) Attorney-Registration and
Attorney - Respondent) Disciplinary Commission

ORDER

Motion by Kenneth Alan Kozel for leave to file a third supplement to the petition for leave to file exceptions and to supplement the record is denied.

Order entered by Justice Heiple. April 18, 2000

IN RE KENNETH ALAN KOZEL,
Respondent-Appellant
No. 96 CH 50

Synopsis of Review Board Report and Recommendation

(December 1999)

Kozel was charged in a thirteen-count second amended complaint with various misconduct. Most of the misconduct charged related to false accusations, made by Kozel in pleadings, of bias and prejudice by various judges and frivolous issues raised by Kozel in litigation. Kozel denied misconduct and many of the Administrator's factual allegations.

Following protracted prehearing proceedings and a lengthy hearing, the Hearing Board found that Kozel had engaged in all the misconduct charged and recommended that he be disbarred.

Kozel filed exceptions. He raised numerous objections to the proceedings before the Hearing Board, to the factual findings and conclusions of law by the Hearing Board, and to the Hearing Board's recommendation as to discipline. The Administrator sought to uphold the Hearing Board's findings, conclusions, and recommendation of disbarment.

The Review Board rejected most of Kozel's challenges to the procedures before the Hearing Board. The Review Board concluded that the Hearing Board had erred, however, in prohibiting Kozel from presenting character testimony from two witnesses. Given the Review Board's recommendation as to discipline, the Review Board concluded that this error did not warrant remand. The Review Board rejected most of Kozel's challenges to the Hearing Board's findings of misconduct. However, the Review Board

determined that the Hearing Board erred in finding misconduct as to two counts, because the misconduct charged in the second amended complaint differed from the proof presented at the hearing.

The Review Board recommended a three-year suspension, instead of disbarment. In recommending this discipline, the Review Board considered the fact that Kozel had engaged in very serious misconduct. The Review Board noted that his obstructionist conduct in the disciplinary proceedings, particularly before the Hearing Board, aggravated his misconduct. However, the Review Board concluded that disbarment was not warranted because the evidence did not indicate that Kozel's entire legal career was characterized by filing frivolous lawsuits or making baseless charges of misconduct against judges. Also, some of Kozel's allegations that certain judges were biased had some colorable basis. There was evidence that Kozel performed pro bono work. Further, only two of the matters at issue involved client complaints.

BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION AND
DISCIPLINARY COMMISSION

In the Matter of
KENNETH ALAN KOZEL
Respondent-Appellant
No.1519727
Commission No. 96 CH 50

REPORT AND RECOMMENDATION OF THE
REVIEW BOARD

This case is before the Review Board on exceptions filed by Respondent-Appellant, Kenneth Alan Kozel.

The case was heard on a thirteen-count second amended complaint, filed by the Administrator-Appellee on October 25, 1996. This complaint charged Kozel with violating the Illinois Rules of Professional Conduct by: a) asserting positions on behalf of clients that he knew or should have known would serve merely to harass or maliciously injure another in violation of Rule 1.2(f)(1) (134 Ill. 2d. R. 1.2(f)(1)) (eight counts); b) making statements of material fact or law to a tribunal which he knew or should have known were false in violation of Rule 3.3(a)(1) (134 Ill. 2d R. 3.3(a)(l)) (three counts); c) making statements he knew to be false or with reckless disregard for their truth or falsity concerning the qualifications or integrity of a judge in violation of Rule 8.2(a) (134 1ll. 2d R. 8.2(a)) (ten counts); d) asserting frivolous issues in litigation in violation of Rule 3.1 (134 Ill. 2d R. 3.1) (three counts); e) failing to act with reasonable diligence in representing clients in violation of Rule 1.3 (134 Ill. 2d R. 1.3) (two counts); f) using means to represent clients that had no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4 (134 Ill. 2d R. 4.4) (two counts); g) practicing law in a jurisdiction where doing so violated the regulation of the legal

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profession in that jurisdiction (one count); b) failing to make reasonable efforts to expedite litigation consistent with his client's interests in violation of Rule 3.2 (134 Ill. 2d R. 3.2) (one count); i) failing to keep his client reasonably informed about the status of her case in

violation of Rule 1.4 (134 Ill. 2d R. 1.4) (one count); j) engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4) (155 Ill. 2d. R. 8.4(a)(4) (one count); k) engaging in conduct prejudicial to the administration of justice in violation of Rule 8.4(a)(5) (155Ill. 2d R. 8.4(a)(5)) (thirteen counts); and 1) engaging in conduct which tends to bring the legal profession into disrepute in violation of Supreme Court Rule 771 (134 Ill. 2d R. 771) (seven counts). Kozel denied most of the Administrator's factual allegations and all of the allegations of misconduct.

The Hearing Board found that Kozel engaged in all the misconduct charged and recommended disbarment. Pursuant to an order of the Supreme Court entered on February 13, 1998, Kozel was placed on interim suspension.

Kozel raises a myriad of objections to the report and recommendation of the Hearing Board. The Administrator seeks to uphold the Hearing Board's factual findings, conclusions of law, and recommendation as to discipline.

As an initial matter, we are well aware of the unusually long time that this case has been pending before the Review Board and the concern that this has engendered for the parties. However, this is an unusual case and the time involved in reviewing this matter has been significantly lengthened as a result. The hearing lasted for seven days. In addition, there were extensive prehearing proceedings. The record exceeds 5,000 pages. Careful review of that record was necessary, given the nature of the charges. Most of the charges concerned statements allegedly made by Kozel in

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pleadings. This required review of the statements at issue, and the

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other pleadings, transcripts, and docket sheets in evidence from the cases in which those pleadings were filed. Many of those cases were protracted proceedings. Despite Kozel's objections to their admissibility, the files from the cases in which the challenged statements were made had to be reviewed in order to place the statements at issue into context.

The record, and the proceedings below, were further complicated by Kozel's numerous lengthy prehearing pleadings and numerous objections raised at virtually every stage of the proceedings. Most of Kozel's pleadings and objections lacked a legitimate legal basis. Because some of those pleadings and objections had some colorable basis, thorough review of all was required. These matters served to lengthen the time involved in our review of this matter. The Hearing Board, before which Kozel appeared pro se, described his conduct as obstructionist. This characterization is supported by the record.

Further, there was an unusually large number of issues raised and the briefs were lengthy. While counsel appeared for Kozel at the oral argument, Kozel filed his briefs pro se and he raised over thirty issues. Many of these issues required us to undertake independent research, a factor which similarly added to the time involved in our review of this matter.

This is a serious case, particularly given the Hearing Board's recommendation that Kozel be disbarred. We have considered the issues presented on their merits, without regard to any considerations of waiver.

In reviewing this case, we have intentionally avoided consideration of uncharged misconduct except Kozel's conduct in the disciplinary proceedings, as further discussed below.

In compliance with the Administrative Order of the Illinois Supreme Court
adopted with the amendments to Supreme Court Rule 23 (M.R. No. 10343, June 27, 1994), this report and recommendation does not exceed twenty pages. Therefore, this report does not

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contain a complete discussion of the facts, arguments, or law applicable in this matter. However, we have very carefully considered the record in full and all of the arguments raised by both parties. The absence of a complete discussion in this report does not reflect a lack of thorough consideration of the facts, issues, and law.

The facts are detailed in the Hearing Board's report and recommendation. We briefly summarize the matters at issue.

Kozel was admitted to practice law in Illinois in 1975. He served in the United States Army from 1969-71 and was honorably discharged. Kozel had been married for 27 years at the time of the hearing and is the father of three children. There was evidence that Kozel had performed pro bono legal work and represented many people with little or no income. He officed in LaSalle County.

By way of background, John A. Betts was an attorney. He was suspended (In re Betts, 109 Ill. 2d 154, 485 N.E.2d 1081, 92 Ill, Dec. 838 (1985), cert. denied, 476 U.S. 105, 106 S.Ct. 1949, 90 L.Ed.2d 358 (1986)) and later disbarred. In re Betts M.R. No. 9296

(Sept. 27, 1993). In several counts, Kozel is charged with misconduct occurring while representing Betts, or a relative or former client of Betts.

The Thirteenth Judicial Circuit (Thirteenth Circuit) encompasses LaSalle, Bureau, and Grundy Counties. Several of the counts involve Kozel's conduct in matters pending in the Thirteenth Circuit and his allegations of bias on the part of judges of that circuit. At all relevant times, there were twelve judges in the Thirteenth Circuit. Two sat primarily in Grundy County, two sat primarily in Bureau County, and the remaining eight sat primarily in LaSalle County. Judge Robert Carter was chief circuit judge.

Counts I and II arise out of Kozel's representation of Betts in a bankruptcy case.

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On June 25, 1991, the Illinois Supreme Court issued an order assessing Betts for costs of his disciplinary proceedings. Kozel, on behalf of Betts, sought to obtain a discharge of this debt, and others, in bankruptcy. The assigned bankruptcy judge, Judge John Squires, ruled that this debt was not dischargeable. The misconduct charged in Counts I and 11 concern statements, alleging bias by Judge Squires, made in motions to disqualify Judge Squires filed in the bankruptcy case, in a motion for supervisory order filed in the Illinois Supreme Court, and in a motion filed in the United States District Court, after that court affirmed the bankruptcy court's ruling. Misconduct is also charged because of pleadings filed by Kozel in appealing from the bankruptcy court's ruling that the debt to the ARDC was not dischargeable.

Count III involves Kozel's representation of John Maurice in bankruptcy proceedings. In that proceeding

Kozel made allegations, in pleadings, of bias by the assigned judge, Judge Squires. Misconduct is also charged in his overall handling of that case and of a second bankruptcy petition, filed while an appeal was pending, from rulings on the first petition. This count also involved an alleged failure by Kozel to inform Maurice of offers to settle one of the most significant claims in that case.

Counts IV, VI and X involved issues arising from Kozel's representation of Tracy Greenwood. Tracy Greenwood was the daughter of John Greenwood, who died following a natural gas explosion. As a result of that incident, a wrongful death action was filed in the circuit court for the Thirteenth Circuit. An estate was opened, in the Thirteenth Circuit: Tracy was appointed administrator. Betts originally represented Tracy: John Greenwood was related to Betts.

Judgment was entered in favor of Greenwood in the wrongful death case. In cnnection with post-judgment issues, the circuit court issued a preliminary injunction. Kozel

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appealed from that ruling to the Illinois Appellate Court for the Third District. Count IV concerned Kozel's objections to the appellee's brief, because it contained a facsimile signature, rather than an original signature of counsel. Initially, Kozel filed a motion in the Appellate Court to strike the brief. After the Third District denied that motion, Kozel filed a motion, seeking a supervisory order from the Illinois Supreme Court due to the Third District's ruling.

Count VI involved allegations of bias against Judge Stephen D. White, made in motions for

substitution of judge Kozel filed in the wrongful death and probate cases. Judge White, who typically sat in the Twelfth Judicial Circuit, specially assigned by the Illinois Supreme. Court to hear the Greenwood matters.

Count X concerned similar allegations of bias by Judge White, made in a letter purportedly authored by Kozel and directed to Ray Breen, then executive director of the Judicial Inquiry Board (JIB).

Count V arose out of pleadings Kozel filed in connection with his representation of Donna Fegley in a child custody matter and his allegations, in those pleadings, of bias on the part of Thirteenth Circuit Judges Cynthia M. Raccuglia and Charles E. Marshall.

Count VII arose from Kozel's representation of Martin Gibbs, in two criminal cases and three traffic charges, filed in Bureau County. Judge Carter, as chief judge, assigned all of these cases to Judge Marshall. Count VII concerned pleadings filed by Kozel challenging Judge Carter's assignment of these cases to Judge Marshall, and Kozel's. allegations in those pleadings of bias by Judge Carter.

Count VIII involved Kozel's representation of Betts in proceedings concerning the estate of Betts's deceased stepfather, Glen Serby. Those proceedings were conducted in the LaSalle County circuit court. After the recusal of certain Thirteenth Circuit judges, Judge White

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was also specially appointed to preside in the Serby case. Count VIII concerns Kozel's motions for substitution of judges from Judge White. This count also involves Kozel's motions for substitution from Judges William Banich, Cynthia Raccuglia, Chris Ryan,

and Paul Root after each of those judges was assigned, in succession, to hear the motion for substitution from Judge White. In addition, Count VIII involves Kozel's objections to Judge Carter assigning judges to hear the motion for substitution from Judge White. In each of those pleadings, Kozel alleged that each of the judges was biased and could not fairly decide the matter presented to him or her.

Counts IX and XI concern allegations that Judge Carter and David Carey, the clerk of the LaSalle County, were involved in a political conspiracy. The challenged statements alleged that, due to their political affiliation, Judge Carter overlooked legal irregularities by Carey. The alleged irregularities involved the surety bond posted by Carey as clerk of the court and the destruction of a court file, in a small claims case in which Betts was the plaintiff. Both counts are based on letters which purport to have been sent by Kozel. Kozel denied having sent these letters. The letter at issue in Count IX is directed to Ray Breen of the JIB. Carey received this letter by facsimile transmission. Two letters are at issue in Count XI. One is directed to Dan Mueller, of the Administrative Office of the Illinois Supreme Court. The other is directed to Jim Baker, vice president of the company which issued Carey's surety bond, and indicates that it was circulated to various other people.

Count XII involves Kozel's appearance, on behalf of Betts, in a case pending in the United States District Court for the Central District of Illinois (Central District). At the time of that appearance, Kozel was not admitted to practice before the Central District. Kozel, who asserted that this was an inadvertent error,

was held in criminal contempt of court as a result of this appearance.

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Count XIII concerns Kozel's representation of Johanna Yeager in a worker's compensation claim. Betts originally represented Yeager, but was disbarred while her case was pending. Kozel was co-counsel on the matter. The case was dismissed for want of prosecution, when Kozel failed to appear on a date set for hearing, There was an issue as to whether or not Kozel knew of the date. He did not notify Yeager of the dismissal. She retained other attorneys, who obtained an order reinstating the case. Kozel also sought reinstatement, but only after other counsel had moved to reinstate. There was conflicting testimony concerning the extent of communication between Yeager and Kozel and the nature of the representations made by Kozel concerning the status of the matter.

While there are some counts alleging other types of misconduct, this case esentially involves an attorney who has made numerous unfounded allegations that members of the judiciary are prejudiced, either against the attorney himself or against his clients. Each of the statements at issue claimed that a named judge was engaged in a specific impropriety and recited grounds for the claim of prejudice. For example, Judge Squires was accused of knowingly disregarding Betts's legal rights and procedural deficiencies in the ARDC's adversary complaint in the Betts bankruptcy because he was afraid of the power of the ARDC (Count 1). Kozel's pleadings in the Maurice bankruptcy case accused Judge Squires of treating Kozel and Maurice differently from other debtors and attorneys and of going "along with" the alleged harassment of Maurice

by his creditor (Count III). Judge White was accused of racial bias and a business relationship with the opposing side (Counts VI and X). Judge Marshall was accused of being prejudiced because he allegedly had a referral relationship with opposing counsel in the Fegley case (Count V). Judge Ryan was accused of prejudice against Betts in the Serby case because, allegedly, another judge had spoken to Judge Ryan, and other judges, about Betts (Count VIII).

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This list is merely illustrative. Kozel made a barrage of attacks against various judges, both judges in the circuit in which he normally practices and other judges, such as Judges Squires and White.

Most of Kozel's claims were completely unfounded. There were some instances in which Kozel, after prior unsuccessful attempts, ultimately identified a matter which caused a judge to recuse him or her self. For example, Judge Raccuglia recused herself based on a referral relationship, of which she was previously unaware, between her father and the attorney opposing Kozel in the Fegley case. However, most of Kozel's claims of bias had no basis in fact and Kozel had no basis, other than suspicion, for making them. These groundless attacks against judges were numerous and vituperative.

Additionally, Kozel has demonstrated a pattern of filing frivolous pleadings or raising frivolous issues. The problem is not in raising an issue, in good faith but without success, or in seeking review of an adverse ruling by an appropriate tribunal. Such conduct is appropriate advocacy and is frequently necessary to insure that issues are preserved for further review. However, Kozel's conduct involves repeatedly

litigating issues, over and over again, after those issues have already been raised and adjudicated against him. For example, after the district court affirmed the bankruptcy court's ruling that Betts's debt to the ARDC was not dischargeable, Kozel filed a lengthy motion to alter or amend the district court's ruling. This motion, which rehashed Kozel's original arguments, without any legitimate grounds for repetition, was properly considered frivolous. Likewise, regardless of whether or not Kozel had a legitimate basis for seeking to have the Appellate Court strike the appellee's brief in Greenwood the motion for a supervisory order filed in the Supreme Court was frivolous. That motion raised an extremely technical objection, on a relatively minor issue, which had already been resolved against Kozel

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by the Appellate Court. Further, there was no legitimate basis for seeking the extraordinary remedy of a supervisory order against the Appellate Court, on an issue of that nature.

Kozel has continued this conduct in the disciplinary proceedings, and one of the problems inherent in this litigation style has arisen in this case. Specifically, the repeated raising of numerous frivolous objections creates a need to pour over and address issues which have little or no relevance to the real issues in the case, and distracts the tribunal from being able to address, on their merits, legitimate issues presented and issues which are central to resolving the case. This interferes with the ability of the legal system to consider, and fairly adjudicate, not only the case at hand, but also creates a logjam which interferes with the resolution of other cases before the tribunal. Such conduct also fails to serve the interests of the litigants,

by interfering with the prompt and efficient disposition of their cases.

As noted above, Kozel has raised numerous issues. They fall into categories to which certain standards of review apply. We remind the parties that the summary nature of our discussion of the issues is not a reflection of the level of our review, but rather of the limitations we consider applicable to the length of our written opinion. Any issues not specifically discussed herein have been considered, and we have decided that they do not warrant a different result or explicit discussion in this report.

Kozel raises many objections which are technical in nature, or which focus on minute details of the proceedings. Technical challenges to the practice and procedures before the Hearing Board are not favored and generally will not provide grounds for altering the Hearing Board's report and recommendation. See In re Mitan, 75 Ill. 2d 118, 124, 387 N.E.2d 278, 25 Ill. Dec. 662(1979), cert.denied, 444 U.S. 916, 100 S.Ct. 231, 62 L. Ed. 2d 171 (1979). In this case, none of the arguments Kozel makes on technical points warrants modification of the

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Hearing Board's report and recommendation.

Kozel also raises objections to evidentiary rulings by the Hearing Board. Such rulings are reviewed for abuse of discretion. In re Joyce, 133 Ill. 2d 16, 29, 549 N.E. 2d 232, 139 Ill. Dec. 720 (1989). After reviewing the record and applicable law, we conclude that the Hearing Board did not abuse its discretion in most of the evidentiary rulings challenged by Kozel. However, the Hearing Board did abuse its discretion by prohibiting Kozel from presenting character

testimony because the two prospective character witnesses were in the hearing room after the order was entered excluding witnesses. See generally, Cleary and Graham, Handbook of Illinois Evidence, §615.1 (7th ed. 1999). We do not condone the violation Of this order, and there was no showing why the witnesses were present in violation of the order. However, these prospective witnesses were to be called solely as character witnesses. Wider latitude generally is allowed for evidence in mitigation (see generally ARDC Rule 236) (Dis. Com. R. 236) such as character testimony. Further, there is no indication that there would have been any prejudice to the Administrator if these witnesses had been allowed to testify. Conversely, given the limited information presented as to Kozel's character and background, the Prohibition of this testimony carried a danger of real prejudice to Kozel. However, as we are recommending a lesser degree of discipline, we decline to remand for testimony from these witnesses.

Kozel raises various challenges to the Hearing Board's findings of misconduct and the sufficiency of the evidence to support those findings.

In attorney disciplinary cases, the Administrator is required to prove the misconduct charged by clear and convincing evidence. Supreme Court Rule 753©(6) (166 Ill. d R. 753(c)(6)); In Re Blank, 145 Ill. 2d 534, 547, 585 N.E. 2d 105, 165 Ill. Dec. 709 (1991); In

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Re Woldman, 98 Ill. 2d 248, 254, 456 N.E. 2d 35, 74 Ill. Dec. 533 (1983). As demonstrated by an overall review of its report and recommendation, the Hearing Board recognized, and applied, these principles. See In re

Samuels, 126 Ill. 2d 509, 53 5 N.E.2d 808, 816, 129 Ill. Dec. 43 (1989).

Factual findings of the Hearing Board are reviewed deferentially and will not be overturned unless they are against the manifest weight of the evidence. In re Smith, 168 Ill. 2d. 269, 283, 659 N.E. 2d 896, 213 Ill. Dec. 550 (1995). While the Review Board need not accept the Hearing Board's factual findings if they are not supported by clear and convincing evidence (In re Holz, 125 Ill. 2d 546, 554, 533 N.E.2d 818, 127 Ill. Dec. 736 (1988)), we are not free to reverse a decision simply because we might have reached a different conclusion if we had decided the issue in the first instance. In re Tuchow, 90 CH 305 (Review Board Oct. 12, 1994), approved and confirmed, No. M.R. 6757 (Jan. 25, 1995). Instead, for a finding to be against the manifest weight of the evidence, the opposite conclusion must be clearly apparent, i.e.,. the findings must appear to be arbitrary, unreasonable, and not based on the evidence. Cleary & Graham, Handbook of Illinois Evidence, 301.7 (7th ed.1999).

Many of Kozel's arguments are directed to the weight and sufficiency of the evidence and/or the credibility of the witnesses. We have considered all of these arguments and conclude that the findings of the Hearing Board are not contrary to the manifest weight of the evidence. The fact that some of the Hearing Board's findings were based on circumstantial evidence (Counts IX, X, and XI) does not undermine their reliability. Circumstantial evidence is legitimate evidence; indeed, circumstantial evidence may be more convincing than direct evidence and it need not exclude all other possible inferences. McCullough v.

Gallaher & Speck, 254 Ill. App. 3d 941, 949, 627 N.E. 2d 202, 208, 194 Ill. Dec. 86 (1st Dist. 1993); see also Harris

Trust & Savings Bank v. Otis Elevator Co., 297 111. App. 3d 383, 696 N.E.2d 697, 231 Ill. Dec. 401 (Ist Dist.), appeal denied, 179 Ill. 2d 582, 705 N.E.2d 437, 235 Ill. Dec. 564 (1998). We review to determine whether or not the Hearing Board's factual findings are against the manifest weight of the evidence. Smith, 168 Ill. 2d at 283, 659 N.E. 2d 896, 213 Ill. Dec. 550. As noted above, we conclude they are not.

The Administrator did not prove some of the facts alleged in some of the counts of the complaint. For example, Counts V and VIII involve multiple allegations of bias, in multiple pleadings, against multiple judges. Some of those allegations by Kozel had a sufficient factual basis to justify the filing of a. motion for substitution, such as the motions to disqualify Judge Cynthia Raccuglia due to a referral relationship between her father and opposing counsel in the Fegley case and due to her own prior recusal in the Serby case. Such allegations do not constitute misconduct. However, the misconduct charged in those counts included unfounded, false, and baseless allegations of bias by other judges; therefore, the Hearing Board's finding of misconduct on those counts may stand.

Kozel raises various legal issues in objecting to the Hearing Board's findings of misconduct. The Review Board considers such issues de novo. In re Discipio, 163 Ill 2d 515, 527, 645 N.E.2d 906, 206 Ill. Dec. 654 (1995); In re Owens, 144 Ill. 2d 372, 377, 581 N.E.2d 633, 163 Ill. Dec. 479 (1991). We have

considered all of the legal issues raised; we discuss only the more important ones.

There are strong, and legitimate, policy reasons for protecting the court system and members of the judiciary from unfounded attacks, particularly by attorneys. See In re Phelps, 55 Ill. 2d 319, 303 N.E.2d 13 (1973); In re Mason, 33 Ill. 2d 53, 58, 210 N.E.2d 203 (1965). Consequently, attorneys who make defamatory statements about the integrity of the

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judiciary are legitimately subject to discipline. In re Jaffree, 93 Ill. 2d 450, 444 N.E.2d 143, 67 Ill. Dec. 104 (1982); Phelps, 55 Ill. 2d 319, 303 N.E.2d 13. As officers of the court, attorneys accept the imposition of certain standards of conduct, including standards designed to maintain faith in the integrity of the legal system. In re Sarelas, 50 Ill. 2d 87, 97, 277 N.E.2d 313 (1971), cert denied, 406 U.S. 968, 92 S.Ct. 2412, 32 L.Ed. 2d 666 (1972). While this does not allow the disciplinary system to disregard First Amendment considerations (see e.g. In re Oliver 452 F.2d 111, 114 (7th Cir. 1971)), First Amendment principles do not shield attorneys who make false accusations against judges where, as here, the attorney knows that the statements are false or makes statements with reckless disregard for their truth or falsity. In re Matter of Palmisano, 70 F.3d 483 (7th Cir. 1995), cert. denied,517 U.S. 1223, 116 S.Ct. 1854, 134 L.Ed.2d 954 (1996); United States v. Sandlih,12 F.3d 861, 866-67 (9th Cir. 1993); In re Palmisano, 92 CH 109 (Review Board Feb. 17, 1994), approved and confirmed, No. M.R. 10116 (May 19, 1994). Singularly, provisions virtually identical to those of Rule.8.2(a) of the Rules of Professional Conduct (134 Ill. 2d R. 8.2(a)) have been upheld against

challenges that the provisions are Constitutionally overbroad. Sandlin, 12 F.3d at 866.

While statements of opinion are Constitutionally protected (Owen v. Carr, 113 Ill. 2d 273, 280, 497 N.E.2d 1145, 100 Ill. Dec. 783 (1986)) and attorneys can legitimately criticize a judge and disagree and disagree with his or her rulings, attorneys cannot cross the line and unjustly impugn the character or integrity of a judge without having any basis for doing so. See In re Sawyer, 360 U.S. 622, 631-32, 634-36, 79 S.Ct. 1376, 3 L.Ed.2d 1473, 1480-83 (1959); People ex rel. Chicago Bar Association v. Metzen, 291 Ill. 55, 58, 125 N.E. 734 (1919). This is true even of statements which might appear to be matters of opinion, where those statements imply a factual basis and where there is no support for that factual basis. Palmisano, 70 F.3d at 487. While the

Ninth Circuit has taken a contrary view (Standing Committee on Discipline v. Yagman, 55 F. 3d 1430 (9th Cir. 1995)), we agree with the Seventh Circuit's rejection of those portions of the Yagman opinion. Palmisano, 70 F.3d at 487. Further, accusations of bias or improper collusion with the opposing party or opposing counsel, which have no basis or are based on mere conjecture, are not constitutionally protected and will subject an attorney to discipline. In re Betts, No. 90 SH 49 (Review Board June 16, 1993), order of disbarment entered, No. M.R. 9296 (Sept. 27, 1993).

The ARDC, as the agent of the Supreme Court, legitimately prosecuted all of the charges of misconduct here, and the Illinois Supreme Court has jurisdiction to discipline Kozel for all of the misconduct charged, even though some of that misconduct

occurred in the federal courts. See Jaffree, 93 Ill. 2d at 456, 444 N.E. 2d 143, 67 Ill. Dec. 104; Mitan, 75 Ill. 2d at 123, 387 N.E.2d 278, 25 Ill. Dec.662. Further, the procedures promulgated by the Supreme Court for the conduct of attorney disciplinary proceedings, including review by the Review Board as opposed to review under the Administrative Review Law, 735 ILCS 5/3-101 et seq., are legitimate delegations by the Court, to its agents, of its authority to discipline attorneys. See In re Harris, 93 Ill. 2d 285, 443 N.E.2d 557, 559, 66 Ill. Dec. 631 (1982); Mitan, 75 Ill. 2d at 124, 387 N.E.2d 278, 25 Ill. Dec. 662; Phelps, 55 Ill. 2d at 322, 303 NE.2d 13; Sarelas 50 Ill. 2d at 96; 277 N.E.2d 313. The Court has ultimate authority over attorney disciplinary matters, and the procedures it has established for those proceedings at the Hearing and Review Board levels do not deny constitutional principles. See Harris, 93 Ill. 2d 285, 443 N.E.2d at 559, 66 Ill. Dec. 631; Mitan, 75 Ill. 2d at 124, 387 N.E.2d 278, 25 Ill. Dec.662; Phelps, 55 Ill. 2d at 322, 303 N.E.2d 13; Sarelas, 50 Ill. 2d at 96, 277 N.E.2d 313.

Kozel challenges the Hearing Board's findings of misconduct as to Count XII,

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given a prior closure of this charge by the Inquiry Board. Because there are ambiguities in the record on this point, and as we, like the Hearing Board, see the misconduct in Count XII as not adding in any significant way the discipline to be imposed, we do not decide whether Count XII was improperly included in this case. However, there are legitimate policy concerns, including issues of laches, in allowing the Administrator to seek to prosecute charges against a respondent where an inquiry panel has previously

closed an investigation into those same facts, without charges. See In re Friedman, 92 CH 26 (Hearing Board Report Jan. 7, 1993). This would seem to contravene the powers of the Inquiry Board. See Supreme Court Rule 753 (166 Ill. 2d R. 753); ARDC Rule 211 (Dis. Com. R. 211); Betts, 109 Ill. 2d 154, 485 N.E.2d 1081, 92 Ill. Dec. at 844; Mitan, 75 Ill. 2d at 126, 387 N.E. 2d 278, 25 Ill. Dec. 662.

Two of the counts, Count's IX and X, charge Kozel with misconduct based on statements made in correspondence directed to the chairman of the Judicial Inquiry Board (JIB). Kozel contends that he cannot legitimately be found to have engaged in misconduct due to statements made to the JIB.

Communications with the JIB are confidential (Owen v. Mann, 105 Ill. 2d 525, 535, 475 N.E. 2d 886, 86 Ill. Dec. 507 (1985)) and privileged. Starnes v. Intemational Harvester, Co., 184 Ill. App. 3d 199, 203, 539 N.E.2d 1372, 132 Ill. Dec. 566 (1989), criticized on other grounds, Bryson v. New America Publications, 174 Ill. 2d 77, 108, 672 N.E.2d 1207, 220 Ill. Dec. 195 (1996). However, the privilege does not apply to false statements made by an attorney to the JIB, which the attorney knows to be false or makes with reckless disregard for their falsity, or where the statements are disseminated to someone other than the JIB. In re Palmisano, No. 92 CH 109 (Review Board Feb 17, 1994).

Here, the evidence showed that letters containing the statements which were the

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subject of Counts IX and X were received, by facsimile, by Carey, the clerk of the court. There is no indication of whether or not the same letters were sent to, or received by, the executive director of the JIB, to whom

the letters were directed. However, Counts IX and X charge Kozel with misconduct by virtue of having sent the letters to the JIB, not to Carey. This is a different theory and would involve different legal considerations. As an attorney cannot properly be disciplined for uncharged misconduct (In re Ruffalo, 390 U.S. 544, 88 S.Ct. 1222, 20 L.Ed. 2d 117 (1968)), the Hearing Board's findings of misconduct on these two counts should not stand.

The final issue to be discussed concerns the propriety of the sanction recommended by the Hearing Board. The Hearing Board's recommendation as to discipline, while deserving consideration, is not binding. In re Imming, 131 Ill. 2d 239, 545 N.E. 2d 715, 720, 137 Ill. Dec. 62 (1989).

In fashioning the proper sanction to be imposed in any given case, the Review Board seeks to impose sanctions consistent with those imposed in other similar cases; however, each case is unique and must be resolved based on its own particular facts and circumstances. In re Timpone, 57 Ill. 2d 178, 197, 623 N.E. 2d 300, 191 III. Dec. 55 (I 993); Jafree, 93 Ill. 2d at 459, 444 N.E. 2d 143, 67 Ill. Dec. 104. In imposing discipline, the purpose is not to punish the individual respondent, but to protect the public, maintain the integrity of the profession, and protect the administration of justice from reproach. Timpone, 157 Ill. 2d at 197, 623 N.E.2d 300, 191 Ill. Dec. 55. The principle of seeking some level of consistency in imposing discipline requires comparison with other cases involving similar misconduct. See, generally Jafree, 93 Ill. 2d at 459, 444 N.E. 2d 143, 67 Ill. Dec. 104.

We have considered cases involving misconduct similar to Kozel's. In some such cases, the respondents

have been disbarred. E.g. Jafree, 93 Ill. 2d 450, 444 N.E. 2d 143, 67 Ill.

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Dec. 104, People ex rel. Chicago Bar Association v. Metzen, 291 Ill. 55, 125 N.E. 734 (1920), In re Palmisano, 92 CH 109 (Review Board Feb. 17, 1994), approved and confirmed, No. M.R. 101 16 (May 19, 1994). The Hearing Board relied on Jafree and Palmisano in recommending disbarment here. However, there are differences between the conduct of the respondents in those cases and in Kozel's conduct and circumstances overall. Unlike Kozel, Metzen publicized, in the press, his accusations against the judiciary, and attempted to intimidate and influence the judge against whom the accusations were made. Metzen 291 Ill. at 58, 125 N.E. 734. The sheer volume of frivolous litigation filed by Jafree differentiates his circumstances from Kozel's. In addition, Jafree had a prior suspension. Also, in disbarring Jafree, the Court observed that his entire legal career was characterized by the filing of frivolous lawsuits and scurrilous charges. Jafree, 93 Ill. 2d at 462, 444 N.E.2d 143, 67 Ill. Dec. 104. This is not true of Kozel. Also, while not true of all the judges, several of the Thirteenth Circuit judges who testified indicated that they did not have an overall bias against Kozel and that he appeared before them in other cases, which were not the subject of these proceedings, without incident or problem. In Palmisano all of the allegations were completely unfounded and the respondent's attacks against members of the judiciary included specific allegations that named judges had engaged in criminal wrong-doing. Here, in contrast, some of Kozel's allegations of bias had some colorable basis.

This is afactor which we have considered in mitigation in this case.

In other cases involving misconduct of this nature, the respondents were suspended, not disbarred. E.g. Phelps, 55 Ill. 2d 319, 303 N.E. 2d 13 (two-year suspension); suspension); Sarelas, 50 Ill. 2d 87, 277 N.E. 2d 313 (suspension for two years and until further order of the Court); In re Mason, 33 Ill. 2d 53, 210 N.E. 2d 203 (1965) (one-year suspension); People ex rel. Chicago Bar Association v. Standidge, 333 Ill. 361, 164 N.E. 844 (1928) (six-month suspension).

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The misconduct at issue in Mason and Standidge was far more limited than that here. Therefore, Kozel deserves a harsher sanction than was imposed in those cases. We also see his overall misconduct as more severe that that of respondents in Phelps and Sarelas, and there is some additional misconduct in this case. Therefore, we recommend a three-year, rather than a two-year, suspension. However, we do consider those cases in our overall decision to recommend suspension, rather than disbarment.

We have reviewed the applicable case law, and the record, in detail. Kozel's misconduct is serious. Such conduct does not serve the interests of Kozel's clients or the legal system, and demeans the public perception or the integrity of the judiciary and the legal profession. Kozel's misconduct very nearly warranted the forfeiture of his privilege to practice law. We do not believe responsible advocacy would be chilled by imposing severe discipline or even disbarment under circumstances such as these.

Kozel's underlying misconduct is aggravated by his conduct in the disciplinary proceedings, where he has continued to repeatedly re-litigate issues, and to engage in abusive attacks, such as his extremely offensive attacks against the members of the hearing panel. See Sarelas, 50 Ill. 2d at 98, 277 N.E. 2d 313. Contrary to Kozel's arguments, that conduct is legitimately considered in aggravation. See In re Smith, 168 Ill. 2d 269, 295, 659 N.E.2d 896, 213 Ill. Dec. 550 (1995); In re Samuels, 126 Ill. 2d 509, 535 N.E. 2d 808, 129 Ill. Dec. 43 (1989).

However, there are mitigating factors present here which cause us to recommend a suspension, instead of disbarment. These include the fact that there is evidence of pro bono work and the fact that only two of the matters here (Yeager and Maurice) involve client complaints. Additionally, the following considerations mitigate the severity of the misconduct.

There were some instances in which Kozel had a basis for alleging that a

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particular judge was biased against him or his client. For example, Judge Carter acknowledged that he never heard cases in which Kozel or Betts was involved and that he never spoke to Kozel unless a court reporter was present. Some of the allegations involving Judge Raccuglia caused her to recuse herself. We do not suggest that, in each instance in which there was a colorable basis for seeking recusal, the judge at issue was actually prejudiced; that is not the issue. We Also do not condone the excessive, immoderate, and unjustifiable language used by Kozel in claiming prejudice. However, the fact that not all of the

allegations at issue were groundless reduces the severity of Kozel's overall misconduct.

For these reasons, we affirm the findings of fact and conclusions of law of the Hearing Board on Counts I through VIII and Counts XI through XIII. We reverse its findings of misconduct on Counts IX and X. We recommend that Respondent-Appellant, Kenneth Alan Kozel be suspended for three years.

Respectfully submitted,
Robert J. Egan
Kevin M. Forde
Melissa A- Rheinecker

Date: 30 December 1999

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Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH A KOZEL,
Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari
To The Illinois Supreme Court

APPENDIX, VOLUME 2

KENNETH A. KOZEL
PETITIONER
801 SECOND STREET
LA SALLE, IL 61301
(815) 223-4400

101pp

Volume 2

Report & Recommendation of the
Hearing Board of 11-5-97 29-128

BEFORE THE HEARING BOARD OF THE
ILLINOIS ATTORNEY REGISTRATIONAND
DISCIPLINARY COMMISSION

In the Matter of:
KENNETH ALAN KOZEL,
Commission No. 96 CH 050
Attomey-Respondent.
No.1519727

REPORT AND RECOMMENDATION OF THE HEARING BOARD

INTRODUCTION

T'he hearing in this matter was held on February 5, 6, 7, 8, 11, 12 and 13, 1997 at the offices of the Attorney Registration and Disciplinary Commission, One Prudential Plaza, 130 East Randolph Drive, Suite I100, Chicago, Illinois before a Panel of the Hearing Board consisting of Vincent E. Vitullo, Chair, Frances Skinner, lawyer member, and Robert Adams, public member. Millicent Willis and Vasiliki Verveniotis appeared on behalf of the Administrator. Respondent appeared pro se.

The Pre-Hearing Record

The complaint in this matter was filed January 11, 1996. Approximately four pre-hearing conferences were held in this matter and numerous other orders were necessitated by the voluminous number of motions Respondent filed. The following motions and orders were filed on the following dates:

February 7, 1996 Respondent filed a Motion to Dismiss or, in the Altemative, to Disq.ualifv

the Administrator from further proceedings in the matter and the assignment of a special prosecutor to be made.

On February 13, 1996 the Chair denied the Respondent's Motion to Dismiss and ordered the Respondent to answer or otherwise plead on or before March 1, 1996. Respondent then filed a motion for leave to file briefs in support of the Motion to Dismiss.

On February 26, 1996 Respondent filed a Motion to Strike and Dismiss the Administrator's Report pursuant to Commission Rule 253. The Administrator filed a response.

The Chair denied Respondent's Motion to Strike or Dismiss the Administrator's Report Pursuant to Commission Rule 253 on March 6, 1996.

On March 4, 1996, Respondent filed a Motion to Order the Administrator to Place in the Record Testimony Under Oath or a Sworn Statement Regarding how Motions are Handled by the ARDC Including the Preparation of orders by ARDC Personnel and to Order all Orders be Signed Bv the Chairman and that ARDC Personnel be barred from affixing the Chairman's signature to such orders.

On March 5, 1996, Respondent filed a Motion to Continue the Proceedings Generally.

On March 6, 1996, Respondent filed a Motion to Dismiss the Complaint for Failure to Attached Required Exhibits as Required by the Code of Civil Procedure. On that same date Respondent filed a Motion to Dismiss Counts IX and X of a Complaint filed by the Administrator A2ainst Kenneth A. Kozel.

On April 5, 1996, Respondent filed a Motion to Dismiss Counts 1. 11, and III of a Complaint filed by

the ARDC Alleging Professional Misconduct by Attomey Kenneth A. Kozel because of a Lack of Jurisdiction by the ARDC, a Motion to Dismiss Count IV of the Complaint filed by the

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Administrator and directed towards Kenneth A. Kozel, a Motion to Dismiss Count V of the Complaint Filed Herein for Failure to State a Cause of Action Alleging a Prima Facie Case of Professional Misconduct by Attomey Kenneth A. Kozel, a Motion to Dismiss Counts VI [6], VII [7], VIII [8] and XI [11] for Failing to State a Cause of Action Alleging Professional Misconduct a Motion to Reconsider the Panel's Denial of Kozel's Motion to Dismiss Counts 9 and 10 of the Administrator's Complaint, a Motion for Reconsideration of the Denial of Kozel's Motion to Dismiss Count XII [12] because it Relitigates an Issue already Disposed of by the Inquiry Panel, not the Administrator and a Motion to Dismiss Count 13 of the Administrator's Complaint.

On April 11, 1996, Respondent filed a Motion to Quash the Notice of Deposition for Failure to Comply with the Rules of the Illinois Supreme Court as to the Place of Deposition.

On April 12, 1996, the Administrator filed the Administrator's Response to Respondent's Motion to Ouash the Notice of Deposition and Motion to Compel.

On April 29, 1996, the Respondent filed his Rebuttal to the Administrator's Response to Respondent's Motion to Quash the Notice of Deposition.

On April 29, 1996, the Respondent filed his rebuttal to the Administrator's Response to

Respondent's Motion to Compel.

On April 11, 1996, Respondent filed a Motion to Dismiss or to Otherwise Restrict the Administrator's Request to Produce.

On April, 12, 1996, the Administrator filed a Motion to Deem the Allegations of the Complaint Admitted Pursuant to Commission Rule 236. Respondent filed a response to the Administrator's Motion to Deem the Allegations of the Complaint Filed Herein as Admitted and Motion to Deny the Administrator's Request to Deem the Allegations Admitted. The

Administrator's Motion to Deem the Allegations of the Complaint Admitted was denied on July 16, 1996.

On May 3, 1996, Respondent filed a Motion for additional Time to Respond to the Administrator's Response to the Respondent's Motions to Dismiss Counts 1, 11, 111, IV, V, VI, VII, VIII, XI and XIII and Respondent's Motions to Reconsider the Denial of Motions to Reconsider Denial of Respondent's Motion to Dismiss Counts IX, X. and XII.

On May 10, 1996 the Administrator filed a report Regarding Respondent's Motion for Additional Time to Respond.

Respondent's Motion for Additional Time to Respond to the Administrator's Response to Kozel's Motions was denied on July 16, 1996.

On June 14, 1996 Respondent filed his Reply to the Administrator's Response to the Respondent's Motions to Dismiss Counts 1, 11, 111, IV, V, VI, VII, VIII, XI and XII, and Respondent's Motion to

Reconsider Denial of Respondent's Motion to Dismiss Counts IX, X and XII.

On July 16, 1996 Respondent filed Respondent's Motion to Dismiss Counts 1, 11 and III of a Complaint filed by the ARDC alleging Professional Misconduct by Attomey Kenneth A. Kozel, the Respondent's Motion to Dismiss Count IV of the Complaint filed by the Administrator and directed toward Kenneth A. Kozel, Respondent's Motion to Dismiss Count V of the Complaint filed herein for failure to state a cause of Action alleging a prima facie case of professional misconduct by attorney Kenneth A. Kozel, Respondent's Motion to Dismiss Counts VI, VII, VIII and XI for Failure to State a Cause of Action alleging Professional Misconduct, Respondent's Motion to Reconsider the Panel's denial of Kozel's Motion to Dismiss Counts 9 and I0 of the Administrator's

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Complaint, Respondent's Motion for Reconsideration of the Denial of Kozel's Motion to Dismiss Count XII because it Relitigates an Issue already Disposed of by the Inquiry Panel, not the Administrator, Respondent's Motion to Dismiss Count 13 of the Administrator's Complaint were denied. Also on July 16, 1996, Respondent was deemed to have waived any further objections to the Administrator's complaint and was ordered to file an answer to the complaint on or before August 28, 1996. Furthermore, the Administrator was ordered to file an Amended Complaint regarding all counts containing references to Rule 8.2.

On August 7, 1996, Respondent filed a Motion to Reconsider Sections of an Order Entered by the Chairman of the Hearing Panel on July 16, 1997.

Specifically in this pleading Respondent again requested Counts 1, 11, 111, and XII be dismissed and further requested he be allowed to file responsive pleadings rather than an answer and, finally, requested he be permitted to file his answer after the administrator filed her amended complaint.

The Respondent's Motions to Dismiss Counts 1, 11, III and XII were, again, denied on August 12, 1996, but the Respondent was granted his request not to file his answer in a piece-meal fashion and the Respondent was ordered to answer the First Amended Complaint in its entirety on or before August 30, 1996

The Administrator filed her First Amended Complaint on August 7, 1996.

On May 13, 1996, Respondent filed Respondent's First Request to Produce.

On June 13, 1996 the Administrator filed the Administrator's Response to Respondent's Request to Produce.

On August 27, 1996, Respondent filed his First Demand to Admit the Genuineness of Documents.

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On August 29, 1996, Respondent filed an Illinois Supreme Court Rule 219 Motion wherein
He alleged the affidavit provided and signed by Counsel for the Administrator failed to sufficiently comply with Supreme Court Rule 214 as it was not signed by the Administrator herself. This Motion was denied September 4, 1996.

On September 19, 1996 the Administrator filed Administrator's Reply to Respondent's Demand to Produce (sic).

On September 17, 1996, Respondent filed his Second Demand to Admit the Genuineness of Documents.

On October 3, 1996, the Administrator filed her reply to the Respondent's Second Demand to Admit. On that same date, Respondent filed a Third Demand to Admit Genuineness of Documents and his First Demand to Admit Facts.

On October 3, 1996 the Administrator filed a Motion to Compel Production of Documents or, in the Altemative, to bar the Respondent from Offering Exhibits and offering Testimony Concerning Exhibits at Hearing.

On October 8, 1996, the Administrator filed her First Request for Admission of Facts and Genuineness of Documents.

On September 10, 1996, Respondent filed an answer to the Administrator's First Amended Complaint.

On October 9, 1996, the Respondent filed a Motion for a Protective Order.

On October 10, 1996, the Administrator was ordered to filed an amended complaint with all documents referred to therein on or before October 16, 1996, and the Respondent was ordered to file an amended answer meeting the standards of Commission Rule 23 3 on or before November 6, 1996

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which was later extended, by order to November 27, 1996.

On November 6, 1996 Respondent filed a Motion to Quash a Request to Produce Documents and a Demand to Admit the Genuineness of Documents.

The Respondent's Motion to Quash the request was denied November 20, 1996.

On December 11, 1996, Respondent filed a Motion for Leave to File Response to

Administrator's First Request for Admission of Facts and Genuineness of Documents Instanter.

On January 2, 1997, Respondent filed Kenneth Kozel's Response to the Administrator's Response to Respondent's Motion for Leave to file Resp2onse to Administrator's First Request for Admission of Facts and Genuineness of Documents.

On December 16,1996, the Administrator filed a Motion for Sanctions Pursuant to Supreme Court Rule 219 wherein she requested the Respondent be barred from introducing any documentary evidence at hearing. This was denied in part and granted in part on January 7, 1997. It was granted as to Counts 1, 11, 111, V, VI, VII and VIII.

On January 30, 1997 Respondent filed a Motion to Vacate Part of Order Entered January 7, 1997, Granting in Part the Administrator's Motion for Sanctions for Refusal to Admit or Deny the Validity of Documents. Respondent claimed in this motion that he never received a copy of the Administrator's Motion requesting such sanctions.

On December 6, 1996 the Administrator filed a Motion to Deem the Allegations of the Complaint Admitted Pursuant to Commission Rule 236.

On January 8, 1997 the Administrator filed a Motion for Leave to Conduct a Videotaped Evidence Deposition of Judge William R. Banich of the Thirteenth Judicial Circuit.

On January 14, 1997, Respondent filed an Objection to the Administrator's Motion for Leave

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To Conduct a Videotaped Evidence Deposition. The motion was granted on January 16, 1997.

On January 14, 1997 Respondent filed his Second Demand to Admit Facts, his Third

Demand to Admit Facts, his Fourth Demand to Admit Genuineness of Documents and his Sixth (sic) Demand to Admit Genuineness of Documents. The Administrator filed objections noting that the requests were not material or relevant to the issues contained within the complaint and because Respondent failed to provide the Administrator with sufficient time to respond to the demand.

On January 14, 1997 Respondent filed a Motion to Continue the Merit Hearing.

On January 15, 1997 Respondent filed a Motion to Vacate Proceedings all Proceedings (sic) in this Cause from the Filing of the Complaint to Date and for Other Relief.

On January 15, 1997, a letter to the deputy clerk of the commission was received at the ARDC via facsimile wherein Respondent indicated he would be unable to be available for the pre-hearing scheduled for that date. Respondent stated that the pre-hearing conference therefore would have to be rescheduled and, further, objected to pre-hearing conferences being held by telephone. The pre-hearing was held without Respondent.

On January 30, 1997 Respondent filed a Motion to Reconsider and Vacate the Pre-hearing Order of January 16, 1997.

On January 21, 1997, Respondent filed a Motion for Supervisory Order with the Illinois Supreme Court. The Administrator filed her Objection to Motion for a Supervisory Order on January 27, 1997. The Respondent filed his Reply- to the Administrator's Objections to Motion for Supervisory Order Instanter and that filing was accepted by the Supreme Court on February 7, 1997. On February 13, 1997 Respondent's Motion for Supervisory Order was denied.

On January 24, 1997 Respondent filed a Motion for Supervisory Order in the Illinois

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Supreme Court. On approximately January 31, 1997 the Administrator filed her Objections to the Respondent's Motion for Supervisory Order.

On February 4, 1997 Respondent filed a Motion Objecting to the Location of the Merit Hearing.

On February 4, 1997 Respondent filed a Motion to Dismiss Counts 1-3 and 12 and the Administrator filed Administrator's Response to Respondent's Motion to Dismiss Counts 1-3 and Motion to Dismiss Counts 4-12.

On February 5, 1997 Respondent filed a Motion to Continue the Hearing Scheduled for February 5, 1997. Respondent further filed on that date a Motion to Reallege all Prior Motions Which Relate to the Substance of the Complaint. This motion was denied on the record at hearing. On February 4,1997 Respondent filed a Motion to Dismiss Counts 4-12. This motion was denied on the record at hearing.

Finally, on February 4, 1997 Respondent filed suit in Federal Court requesting a Temporary Restraining Order, and a Preliminary Injunction and Permanent Restraining Order to enjoin the ARDC from from hearing the cause entitled 96 CH 50. This request was denied by the Federal Court.

The bulk of the motions filed by Respondent in this case have been utterly without basis in law or fact, so much so that the Chair was compelled to add to his September 4, 1996 order in this matter the following statement: "Respondent has engaged in a pattern of filing motions and petitions which have no basis in law or fact and has not cooperated in these proceedings. In this pre-hearing

conference Respondent could not discuss any meaningful attempts at discovery and refused to discuss the suitability of hearing dates. Should this pattern of obstruction continue suitable sanctions will be imposed." In addition when the Respondent finally filed his answer to the amended

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complaint the answer amounted to a blanket denial of the allegations contained within the complaint.

In addition Respondent filed what amounted to the same motion repeatedly. Specifically, and as an example, we note tat he made motions to dismiss various counts on between approximately three and six occasions either individually or as a part of a blanket Motion to Dismiss. We must make this estimate approximate as the Respondent filed a Motion to Reallege all previous Motions relating to the substance of the complaint and, therefore, an exact number depends upon how one might calculate such a figure.

We find these motions to be frivolous, redundant and examples of an overall ethical and professional failing on the part of Respondent as well as a continuing pattern of obstruction of justice.

Pleadings and Evidence

The Administrator filed a thirteen count second amended complaint against Respondent on October 25, 1996 pursuant to Supreme Court Rule 753(b). Respondent was granted leave to file his answer to the complaint and did so on December 1, 1996.

The Administrator's evidence consisted of Exhibits one through ten and twelve through seventy-one and the testimony of the Judge John Squires, John A. Maurice, Gerald Hunter, John F. Dornik, E. Kent Ayers, John R. Ardaugh, Judge Cynthia Raccuglia, Charles H.

Marshall, Judge James N Lanuti, Judge Stephen D. White, Paul Root Jim Baker, David Carey, Dan Mueller, Judge Howard Ryan, Chief Judge Robert Carter, Johanna Yeager and Stephen Yeager. The Respondent's evidence consisted of Exhibits 1-9, 1-B, 2-1, 2-19, 2-20, 3-1 through 3-10, 42-43 and the testimony of himself and John Betts,

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Respondent testified that he is an honorably discharged veteran and graduated from Creighton law school in 1975. Respondent further testified that be has been married for twenty-four years and has three children. (Tr. 1010-1011)

Counts I and II

Complaint

On September 29, 1982 the Administrator of the Attorney Registration and Disciplinary Commission filed a complaint against John A. Betts for allegedly engaging in attorney misconduct. On October 3, 1985, the Supreme Court of Illinois concluded Betts had engaged in attorney misconduct and suspended him from the practice of law for six months.

At all times relevant to the events alleged in the complaint, Supreme Court Rule 773 provided, in part, that an attorney who is the subject of a disciplinary proceeding that results in the imposition of discipline has a duty to reimburse the ARDC for costs incurred in the investigation, hearing and review of such matters. On June 25, 1991, the Supreme Court of Illinois entered an order allowing the Administrator's petition for costs against Betts in the amount of $3,833.06 pursuant to Supreme Court Rule 773. On September 11, 1991 the Supreme Court of Illinois entered an order denying Betts' motion to vacate the June 25, 1991 order. As of

November 5, 1991 Betts has not paid any part of the S3,833.O6 judgment. About November 5, 1991 Betts filed a petition for relief under Chapter 7 of the Bankruptcy Code in the United States District Court for the Northern District of Illinois.-Respondent represented Betts in the bankruptcy proceedings. (In re John Betts, 91 B 21706)

On March 4, 1992, the Administrator sought leave to file a complaint to determine the whether a debt owed to the ARDC in the amount of $3,833.06 was dischargeable. Respondent was

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sent notice via overnight mail informing him that a bearing concerning the Administrator's request would be conducted on March 6, 1992. On that date neither Respondent nor his client appeared pursuant to the Administrator's notice of March 4, 1992. In their absence Bankruptcy Judge John Squires heard the Administrator's motion for leave to file the complaint and to determine whether Betts' obligation was dischargeable. On February 24, 1993, Respondent filed a motion for supervisory order before the Supreme Court of Illinois, in which Respondent alleged that the Administrator had not provided Betts with adequate notice of hearing of the adversarial complaint and that Juleann Hornyak Clerk of the Supreme Court of Illinois, had improperly certified documents which were attached as exhibits to the Administrator's pleadings. Respondent's motion for supervisory order also alleged that Judge Squires knew that Betts had not received adequate notice of the hearing, and that the Administrator and Juleann Hornyak, Clerk of the Supreme Court of Illinois, had presented false evidence. Respondent stated that Judge Squires knew

that "Robinson and then Commission attorney Ruffle M. How's had 'cooked the books' as far as notice to Betts. But, John Squires was afraid of Robinson and the power of her office. Betts had to be the sacrificial lamb and that's what happened." Respondent argued that these errors tainted Judge Squires' conduct and required an investigation by the Supreme Court of Illinois.

On August 10, 1993, the Federal Bankruptcy Court issued its final order in ARDC v Betts, 92 A 00325. The Court determined that Betts' debt to the ARDC was non-dischargeable. On August 20,1993 Respondent filed a notice of appeal before the U.S. District Court in the Northern District of Illinois The matter was briefed by both parties. On January 24, 1994, Judge Paul B. Plunkett entered a memorandum opinion and order affirming the ruling of the Bankruptcy Court. On February 17, 1994. Respondent filed a motion to alter or amend the memorandum opinion and

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order. Respondent's memorandum in support of the motion to alter or amend stated in part:
Bankruptcy judges are subject to the ARDC, pander to their every wish and whim and are always going to rule in their favor. After all, the bankruptcy Court thinks it's like being on the side of angels...This attorney remembers a story in the Wall Street Journal where in one Federal District where the District Court Judges would not even take the same elevator as the Bankruptcy Court Judges. That can probably mean anything you want it to mean.

Respondent's allegations concerned the judge's qualifications or integrity because they indicated that

Bankruptcy Judge Squires was biased in favor of the ARDC, and that he would not fairly administer in the proceedings. Respondent knew or reasonably should have known that his allegations that Squires was biased in favor of the ARDC related to the judge's qualifications or integrity, and that it was false, Respondent's statements regarding the integrity of Squires was knowingly false or made with a reckless disregard as to its truth or falsity.

On March 25, 1994, Respondent filed an additional pleading that stated in part. "that Judge Plunkett's an old prosecutor." Respondent's allegations concerned the judge's qualifications or integrity because it indicated that Judge Plunkett, due to his former position as a prosecutor, was biased in favor of the ARDC, and that he was not impartial. Respondent's statement suggested that Judge Plunkett could not fairly administer justice in the proceedings. Respondent knew or reasonably should have known that the allegations of impropriety by Judge Plunkett were false. Respondent's statements regarding the integrity of Judge Plunkett were knowingly false or made with reckless disregard as to their truth or falsity.

Judge Plunkett denied the motion to alter or amend on April 4, 1994, and issued a rule for Respondent to show cause why he should not be sanctioned in the amount of $1,000.00 for filing frivolous pleadings. Judge Plunkett concluded that Respondent's pleadings on the motion to alter

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or amend presented no arguments beyond those which had already been rejected. Respondent knew or should have known that his motion to alter or amend contained no additional facts or law to support his

arguments or to provide a basis upon which Judge Plunked could alter or amend his prior ruling.

On May 2, 1994, Respondent filed a notice of appeal with the U.S. Court of Appeals on behalf of John Betts in Betts v. ARDC On June 21, 1994, Judge Plunkett sanctioned Respondent in the amount of $1,000.00, pursuant to the rule to show cause of April 4, 1994. On July 8, 1994, Respondent filed a notice of appeal before the U.S. Court of Appeals regarding the order for sanctions against him. Respondent moved to consolidate that appeal with the prior appeal on behalf of Betts. The Court of Appeals denied Respondent's motion to consolidate, but later consolidated the cases on its own motion. Oral argument was held on Respondent's appeal on January 18, 1995. Following oral argument, the Court affirmed the sanctions against Respondent from the bench.

On or about January 18, 1995, Respondent told a reporter from the Chicago Daily Law Bulletin that the Court's decision was a "flip approach" and that he imagined Judge Coffey decided the case before the oral argument, despite the fact that the judges were attentive and took notes while [Respondent] spoke."

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another-in violation -of rule 1.2(t)(l) of the Illinois Rules of Professional Conduct; bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct; making a statement of material fact or law to a tribunal which the lawyer knows or reasonably

should know is false, in violation of Rule 3.3(a)(1) of the Illinois

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Rules of Professional conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct: and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

Respondent admits Betts has not paid any of the judgment entered against him and states he only partially represented Betts and that he did not represent him throughout the bankruptcy proceedings. Respondent further admitted that neither he nor Betts appeared at the March 6, 1992 proceedings but asserts this is because they did not receive notice of such proceeding. Respondent further asserts he did not represent Betts at the time of the proceeding. Respondent admits that on August 10, 1993 the Federal Bankruptcy Court issued its final order in ARDC v Betts Respondent further admits that on August 20, 1993 a notice of appeal was filed before the U.S. District Court in the Northern District of Illinois in ARDC v. Hells. Respondent further admits the motion to alter or amend on was denied on April 4, 1994, and admits a rule to show cause was issued as to why Respondent

should not be sanctioned in the amount of $1,000.00 for filing frivolous pleadings.

Evidence

John Betts testified be was a lawyer licensed to practice law in the State of Illinois from February of 1976 until May of 1986, when he was suspended from the practice of law for six months, and from November 1986 until his license was revoked by the Illinois Supreme Court in

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May of 1992. tr. 691-692)

On November 27, 1990 the ARDC filed a petition with the Illinois Supreme Court seeking approximately $3,833.06 in costs from Betts in connection with his 1986 suspension pursuant to Supreme Court Rule 773. Betts contested the petition for fees because, he alleged, the proceeding had been completed six or seven years earlier and Supreme Court Rule 773 was not in effect at the time of his suspension. The Court ruled in favor of the Administrator of the ARDC on June 27, 1991 and Betts filed a Motion to Reconsider which was denied September 13, 1991. (Tr. 692-694, Admin. Ex. 2)

Betts filed a petition for bankruptcy on March 23, 1992. The case was assigned number 91 B 21706. United States Bankruptcy Court Judge John H. Squires was appointed to the case and presided over an adversarial proceeding entitled Attorney Registration and Disciplinary Commission the Supreme Court of Illinois v. John Betts tr. 15-17, 694, 891-892, Admin. Exs. 1 and 2)

An adversary proceeding is a matter related to a bankruptcy proceeding and its purpose, in this case, was to determine whether Betts' obligation to the

ARDC relating to the assessment of costs by the Illinois Supreme Court was dischargeable. Respondent represented Betts in this proceeding. (Jr. p. 16, 18, 698-699, Admin. Ex. 2)

Betts asserted that in March of 1992 the ARDC appeared in bankruptcy court ex. parte after claiming that they had provided Betts with notice, via overnight service, of a hearing to be held March 6, 1992. Betts testified this form of notice was in violation of Local Rule 12 which requires two days notice of a proceeding. Betts claimed that Judge Squires knew about the problem with notice, said he did not believe it made any difference and ignored it. (Tr. 695-697, 895)

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Respondent filed a motion requesting Judge Squires recuse himself on July 31, 1992 and Judge Squires denied this request on August 13, 1992. Judge Squires based his denial on his contention that it was not well founded in fact. Judge Squires did not, however, characterize the motion as frivolous nor did he sanction Respondent. Betts filed a motion to dismiss the adversary proceeding on April 8, 1992 which was denied June 16, 1992. Judge Squires granted the motion of the ARDC for summary judgment in the amount of $3,833.06 on January 7, 1993. This ruling was upheld by Federal Judge Paul E. Plunkett on January 24, 1994. Dens then filed a Motion to Alter or Amend on February 17, 1994 which was denied on April 5, 1994. Respondent filed an appeal on Betts' behalf on May 12, 1994 which was denied. (Tr. 18-19, 21, 33-34, Admin. Exs. 4, 5, 7 and 9)

Respondent also filed a Motion for Supervisory Order in the Supreme Court of Illinois on February 22,

1993. The Motion was denied on March 12, 1993. (Tr. 19, Admin. Exs. 3 and 4).

Betts testified that there were certain documents filed by the ARDC in the adversary proceeding that were questionable. Specifically, Betts alleged that there were at least one hundred sheets of paper filed which were allegedly certified by the Illinois Supreme Court Clerk as genuine but, in actuality, were not genuine, did not come from the Supreme Court Clerk's office and had been falsified. Betts testified that the documents had been filed with the Clerk of the ARDC rather than with the Supreme Court. (Jr. 699)

Judge Squires testified he was unaware of any improper conduct with regard to case number 92 A 325 on the part of Juleann Hornyak (Clerk of the Supreme Court), Mary Robinson (Administrator of the ARDC) or Ruth A. Howes (Counsel for the Administrator) as Respondent alleged. Judge Squires further testified that the decision he made in the case was not influenced by

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Mary Robinson and the power of her office, but was based upon the federal bankruptcy court and the applicable case law and that his rulings were fair and impartial and that there was no reason he could not be impartial. Judge Squires testified that be has never had any objection to Respondent appearing before him and added that so long as Respondent is admitted to practice he will treat him like any other lawyer. tr. 19-20, 33, 36)

Findings of Fact and Conclusions Law

We find the testimony of Respondent and Betts to be considerably less credible than that of Judge Squires in reference to these counts. We further find that Respondent's efforts to discharge the debt to the

ARDC in the bankruptcy proceeding was without rational basis and amounts to a frivolous pleading.

Count I

We find the Administrator proved by clear and convincing evidence that the Respondent engaged in violated the Illinois Rules of Professional Conduct: asserting a position of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(F)(1); making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1); making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a); engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Count II

We find the Administrator proved by clear and convincing evidence that the Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(f)(1); bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, public officer,

or of a candidate for election or appointment to judicial or

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legal office, in violation of Rule 8.2(a); engaging in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

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Count III

Complaint

In 1989, Respondent agreed to represent John A. Maurice in a bankruptcy case and filed a Chapter 13 case which was later converted to a Chapter 7 case. Sometime thereafter, John A. Dornik, a creditor who had obtained a judgment against Maurice in 1987, filed a dischargeability complaint against Maurice under Title 11 U.S.C., secs. 523(a)(2)(A) and 523 (a)(6). The Bankruptcy Court later found the debt Maurice owed to Dornik non-dischargeable. The District Court later affirmed the Bankruptcy Court's decision, and Respondent then appealed to the U.S. Court of Appeals for the Seventh Circuit. Prior to filing the appeal, Respondent had not sought or obtained a stay of the District Court's order and while the appeal was pending, Dornik sought enforcement of the 1987 judgment in State Court.

On November 8, 1993, Respondent filed a second Chapter 13 case, In re John A. Maurice, 93 B 23478, on behalf of Maurice, thereby staying Dornik's collection efforts. Dornik filed a motion to lift the automatic stay on November 19, 1993, serving both Respondent and Maurice that day, and also notice that

the motion would be heard November 24, 1993 in Chicago.

Respondent filed this action against Dornik for no substantial purpose other than to embarrass, delay or burden Dornik, and to interfere with Dornik's efforts to enforce his judgment against Maurice. At all times relevant to this complaint; Bankruptcy Rule 3015(b) stated:

The debtor may file a Chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the Court may direct. If a case is converted to Chapter 13, a plan shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and

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on notice as the Court may direct.

Respondent knew or should have known that he was required to file a Chapter 13 Bankruptcy plan within the time provided by Bankruptcy Rule 3015(b). Respondent failed to file a plan within the time provided by the Bankruptcy Rule. On November 24, 1993. neither Respondent nor Maurice appeared for the hearing on Dornik's motion. On that date, the Bankruptcy Judge entered an order which lifted the automatic stay, but also continued the hearing on Dornik's motion until December 17, 1993. The Bankruptcy Court's November 24, 1993 order granted Respondent leave to file responsive pleadings by December 8, 1993. Respondent knew or should have known of the order shortly after it was entered.

On December 17, 1993, Respondent filed a motion to alter or amend the November 24, 1993 order.

In this motion Respondent alleged he had phoned the Bankruptcy Court's chambers on November 24, 1993, and had been advised that the motion was not on the call that day. Respondent contended that the Court lacked jurisdiction because the matter should have been heard in Joliet Illinois. Respondent also filed a motion to dismiss alleging that Dornik's actions constituted improper harassment. At the hearing on December 17, 1993, Respondent filed a motion to disqualify Judge John H, Squires, contending that Squires was not impartial and treated Respondent and Maurice, "differently than he treats other debtors and attorneys who come before him." Respondent further contended that Judge Squires "went along with" Dornik's continued harassment of Maurice. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Bankruptcy Judge Squires was biased against Respondent and his client that the judge was involved in a conspiracy or agreement with Dornik related to the alleged harassment of Maurice, and that he could not fairly administer justice in the proceedings. Respondent knew or reasonably

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should have known that his allegations concerning Judge Squires related to the Judge's qualifications or integrity, and that they were false. Respondent's statements regarding the integrity of Judge Squires were knowingly false or made with a reckless disregard as to their truth or falsity. On January 12, 1994, the Bankruptcy Court denied Respondent's motion to disqualify Judge Squires. On that same date, the trustee's motion to dismiss was granted because Respondent failed to file a plan with the petition as

required under Bankruptcy Rule 3015(b). The Bankruptcy Court also determined that Maurice had failed to pay the first installment of the filing fee. The Court found this case had been tiled in bad faith because the motive in filing the case was to obtain the benefits of a stay without having to post a supersedeas bond. The January 12, 1994 order also stated that Respondent's action crossed "the line of what constitutes professional and civil behavior. It undermines the merits of his respective clients' cases." The Court lifted the automatic stay, and sanctioned Respondent and his client. Respondent was ordered to complete continuing legal education in the areas of bankruptcy and legal ethics. The Court further advised that it would report Respondent's conduct to the ARDC and the Executive Committee of the U.S. District Court for the Northern District of Illinois.
As of October 18, 1995, the date that Panel D of the Inquiry Board of the Commission voted that a complaint be filed against Respondent in this mailer, Respondent had not taken any continuing legal education classes or paid the sanction of $2,282.00.

On February 111994, Respondent filed motions to alter or amend the judgment of January 12, 1994 as to his client and himself. In his motion to alter or amend the judgment as to Maurice, Respondent stated: What is sad about this case, is that Judge Squires is so prejudiced against the debtor

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and the debtor's attorney, and was so intent on finding bad faith and a reason to dismiss this case with prejudice, that he did not even bother to do the most fundamental thing, check the clerk's records to see if

payment of the first $40.00 installment had been made, before he entered his order of January 12, 1994.

In addition Respondent argued:

The dismissal of the debtor's case with prejudice, is another example of how Judge Squires has lost his objectivity, and of Judge Squires' refusal to treat the debtor and the debtor's attorney like everyone else that appears before him... For some reason, Judge Squires does treat Maurice differently than he does Dornik.

Finally Respondent argued:

Judge Squires cites the case of Attorney Registration and Disciplinary Commission v. Betts The debtor's attorney gets the distinct impression that Judge Squires is going to make the debtor and the debtor's attorney pay dearly for that debtor's attorney's representation of unpopular clients like Betts...The debtor is being prejudiced because of Judge Squires' dislike forte debtor's attorney... Judge Squires should not penalize the debtor for his obvious dislike of the debtor's attorney, or for the debtor's attorney's representation of an unpopular client in the case of ARDC v. Betts

Respondent concluded that "If Judge Squires is truly not prejudiced against the debtor as he claims, he should vacate the dismissal with prejudice, and reinstate the case," In his motion to alter or amend as to the debtor's attorney, Respondent adopted all paragraphs of the motion to alter or amend as to the debtor, and argued further that "Judge Squires should have simply disqualified himself from this case when he was considering an attempt to impose discipline on the debtor's attorney, and should do so now, since he has made himself a witness in any disciplinary proceeding that may arise, out of his entry of the order of January 12, 1994." On March 31, 1994, the Court

amended the portion of its opinion which found that Maurice failed to pay the first installment of the filing fee, but otherwise affirmed its decision of January 12, 1994.

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when

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the lawyer knows or reasonably should know that such action would serve merely to embarrass or maliciously injure another in violation of Rule 1 .2(f)(1) of the Illinois Rules of Professional Conduct; failing to act with reasonable diligence in representing a client, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct; bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct; using means to represent a client that have no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4,4 of the Illinois Rules of Professional Conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of Illinois Rules of Professional Conduct; and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

Respondent denies all allegations contained in this count.

Evidence

John A. Maurice first met Respondent in 1981 when he retained Respondent to defend him in a dissolution of partnership and accounting proceeding filed by attorney Gerald Hunter on behalf of John Dornik in the Circuit Court-of LaSalle County; Dornik claimed; in this proceeding, that Maurice owed him $20,000.00. Respondent prepared a verified answer in the matter for Maurice which contained an admission that Dornik had made a capital contribution of $20,000.00 to the business which, according to Maurice, was not true. Maurice noticed the mistake when he read the

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answer prior to signing it but thought it could be amended later. Maurice had no recollection of Respondent telling him to be certain of what the document said prior to signing it nor was he sworn prior to signing, and assumed his signing it was a formality. (tr. 58-59, 63, 83, 86, 88-89, 121-122)

Respondent, in contrast to Maurice, testified he reviewed the answer repeatedly with Maurice and then told him to come back and sign it to fulfill the verification. When Maurice returned to Respondent's office to sign the answer, Respondent claims he had Maurice read it again, and caused him to swear prior to signing it. Respondent testified Maurice was not rushed while reviewing the answer. (Tr. 975-976)

Approximately six months after the complaint was filed Hunter bad a discussion with Respondent regarding possible settlement. At that point Hunter asked Respondent why Maurice didn't just return the $20,000.00 capital contribution. Respondent told Hunter that Maurice had contributed $20,000.00 to the

partnership as well. Hunter told Respondent that partnership law dictates that you take back what you bring in. Shortly after that discussion Respondent amended the pleadings from a theory that alleged the admission of a capital contribution to a theory that alleged that the payment was for the right to be a partner. tr. 123-124)

Respondent testified that Maurice refused to attend the hearings but stated he never attempted to withdraw from the case even when Maurice refused to cooperate. Maurice never received any letters from Respondent with regard to the status of his case and that when he called, Respondent told him that there was no activity in his case most of the time. However, Maurice acknowledged that during the course of the suit with Dornik, he would go to Respondent's office to check on the case. In 1987, a trial was held in state court and Dornik was awarded $12,500.00 based on Maurice's fraud. Within 30 days of the entry of that order Hunter spoke with Respondent and informed him

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that they would not appeal if Maurice did not appeal and paid the $12,500.00. To the best of Hunter's recollection Respondent did not respond to the offer and Hunter had no recollection of Respondent telling him Maurice did not have the money and that he should reconsider the demand. (Tr. 62, 64, 84, 89-90, 125-126, 143, 147-148, 976, 1042, Admin. Ex. 16)

After the ruling, Maurice and Respondent discussed the possibility of filing bankruptcy or an appeal. Maurice denied Respondent's allegation that he suggested Maurice pay the $12,500.00 because it could get worse if he appealed it. Respondent testified

Maurice would not even consider paying the $12,500.00. Respondent then filed an appeal on behalf of Maurice and Hunter filed a cross appeal on behalf of Dornik. Respondent testified that he had a discussion with Hunter but Hunter never offered to settle for less than the full amount. Maurice testified Respondent never advised him tat Dornik, through Hunter, had made offers to resolve the dispute and that he only learned of these offers after discharging Respondent. Dornik prevailed on appeal and was awarded $20,000.00. Maurice received a copy of this order directly from the court rather than from Respondent. Maurice asked Respondent if they could appeal the case again. Respondent filed a petition for leave to appeal with the Illinois Supreme Court but the petition was denied. Following the decision by the Supreme Court not to take the case. Hunter saw Respondent and told him not to bother having Maurice file bankruptcy (which he assumed would be his next plan) because it was a fiduciary debt and could not be discharged. Respondent testified he performed research on that area of bankruptcy law and believed,: based on that research,-that such-a debt was dischargeable absent a finding of fraud. At that point Hunter was offering to accept payment of the entire amount plus interest as payment in full. (Fr. 67, 82, 84, 90-91, 94, 127-129, 140-141, 973-974, 1045)

Maurice did not have the $20,000.00 required to pay the judgment and told Respondent he

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wished to file bankruptcy. Respondent then prepared the bankruptcy petition and filed it. Judge Squires presided over the bankruptcy proceeding and over the adversary proceeding related to the bankruptcy which

was filed by Hunter on Dornik's behalf. The adversary proceeding sought a judgment that Maurice could not discharge the $20,000.00 debt to his client. Judge Squires held a hearing, ruled the debt was not dischargeable and ordered Maurice to pay an additional $9,250.00.
(Tr. 22, 92-93, 71, 74, 130-132, 159)

Maurice testified that Respondent told him through bankruptcy he could get relief from debts including the Dornik judgment. Maurice further asserted Respondent did not keep him advised of the status of his bankruptcy and, when questioned, told him nothing was going on. Maurice never participated in any hearings with regard to the adversary proceeding because Respondent never told him that he had to appear. In the first Maurice bankruptcy proceeding and its related adversary proceeding, Judge Squires held that the debt owed by Maurice to Dornik was not dischargeable under bankruptcy code Sections 523 (a)(2) or (a)(6) which was based, in part, on a fraud finding. Maurice testified he received a letter from the court informing him the bankruptcy plan had never been filed. Judge Squires never received the bankruptcy plan and Maurice has no recollection of Judge Squires declining to approve the plan although Respondent testified that was the case. Maurice further denied that he had authorized Respondent to appeal the ruling which held that the bankruptcy plan was unsatisfactory. Respondent, however, testified Maurice authorized every appeal and every item- filed in connection with the Dornik litigation and the bankruptcies. (Tr. 39, 72-74, 104-105, 962, 965, 967)

Hunter recalled that a settlement discussion which took place in the summer of 1991 wherein he

offered $20,000.00 waiving all interest but Respondent did not respond to the offer. Dornik

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initiated collection proceedings in October of November of 1991. (Tr. 133-134)

In November of 1993. Respondent filed a second Chapter 13 bankruptcy on Maurice's behalf. Maurice did not have the $20,000.00 to obtain an appeal bond of the second bankruptcy. Maurice had no recollection of making a motion to excuse the filing of said bond nor does he recall the motion being turned down. Maurice testified he signed the petition for the second bankruptcy on the advice of Respondent. The purpose of this filing, according to Maurice, was to stop wage garnishments filed by Dornik. This goal was accomplished for a brief period. Maurice does not know if he authorized Respondent to file an appeal when the garnishments began again. Maurice testified Respondent never told him he filed the second Chapter 13 bankruptcy had been filed nor did he keep him advised as to the status of that proceeding. Maurice ultimately received a letter from the Court informing him that the Chapter 13 case had been denied or terminated. Respondent testified Maurice then asked him to file a third-petition for bankruptcy. At that point Respondent testified he told Maurice that Judge Squires had instructed him not to file another petition. Respondent testified Maurice instructed him to file the petition anyway. Respondent then prepared the petition but asked Maurice to allow him to think about whether they should file it for a couple of days. Specifically, respondent told Maurice he felt there was a good chance Judge Squires would hold them in contempt if they filed it. Ultimately Respondent

testified he told Maurice he could not file the petition. Maurice had no recollection of Judge Squires telling him that he was not to file another Chapter 13 case within the following six months of the denial of the second petition. Maurice believed Judge Squires order applied to Respondent and not to himself. Maurice did recall going to Respondent's office after Judge Squire's ruling in the second case and telling him he wanted a third Chapter 13 case filed in proper order. Maurice signed a petition for a third

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bankruptcy at that time. (Tr. 23, 74-76, 79, 100, 102, 111-112. 114-115, 118, 134, 965, 967-968)

Maurice denied he said to Respondent "No way in hell is he going to preside over my case" in reference to Judge Squires. Maurice testified he could not recall whether he was angry with Judge Squires but stated he thinks Judge Squires is an honest man and his decision was correct based on the materials available to him. Maurice testified that he never had any discussions with Respondent regarding (Judge Squires and) Judge Squires' ability to make fair and impartial decisions in his bankruptcy case. Respondent never informed Maurice that he intended to file a motion to disqualify Judge Squires nor did he provide Maurice with copies of any motions to disqualify Judge Squires. Maurice did not authorize Respondent to file such a motion. Maurice did not authorize Respondent to file any motions to alter or amend any orders that were entered by Judge Squires, nor did Respondent provide Maurice with copies of any orders to alter or amend any such motions. Respondent in contrast testified Maurice did not want Squires to hear the second bankruptcy case and authorized the filing of the motion to disqualify

Judge Squires. Respondent testified he filed this motion under the federal code which states that a litigant may allege that a judge's impartiality might reasonably be in question which he believes was the situation. Judge Squires denied the motion. (Tr. 76-78, 95, 103, 135, 963, 965-967)

Maurice terminated Respondent's services by registered letter which was returned to Maurice and by regular U.S. mail on June 14, 1994. Maurice then retained John Renzi to represent him in the bankruptcy-proceedings; Maurice does not recall whether he fired Respondent after Respondent told him he would not file the third chapter 13 case. Maurice terminated Respondent's representation because he felt Respondent had done nothing for him. Following the termination Maurice never authorized Respondent to take further actions on his behalf Maurice went to the Federal building

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and determined the previous Chapter 13 proceeding was still going on. Maurice subsequently withdrew the action and stated no other attorney has filed a third Chapter 13 on his behalf On June 9, 1994, Respondent was supposed to give Maurice his papers but failed to do so on that date or at any time since that date. Respondent told Maurice he had turned aver all documents but Maurice only had items sent to him from the court. tr. 79-81, 114-115, 119)

Judge Squires testified he did not treat Maurice or Respondent at all differently than he treated any other attorney or litigant and believes he was fair and impartial regarding Maurice's bankruptcy proceedings. Hunter also testified he felt Judge Squires had bent over backwards to be fair to Maurice and Respondent

and that Squires' rulings in the case were correct under the law. Judge Squires testified that in his opinion Respondent's motion to recuse him in the Maurice matters was not well founded in law or fact and only served to slow the proceedings. Hunter also testified that Respondent's motions caused delay in the proceedings and estimated he spent hundreds of hours responding to Respondent's motions for which he was paid on an hourly basis. Hunter filed a motion for fees with the Seventh Circuit and in the first Chapter 13 proceeding which was denied for technical reasons but was ultimately awarded a total of $9,000.00 from Respondent. Respondent completed paying this amount one or two weeks prior to the disciplinary hearing. (Tr. 23-25, 33-34, 40-41, 136-138, 140, 142143, 150, 157)

In January of 1994 Judge Squires issued an order and memorandum opinion ordering Respondent to complete sixteen hours of continuing legal education in the area of bankruptcy and eight hours of continuing legal education in the area of legal ethics within one year and ordered Respondent to file a certificate as evidence that he had, in fact, complied with the order. Respondent did not complete the continuing legal education within the one year period but did so

subsequently. Judge Squires testified Respondent did not provide a certificate attesting to his participation of such classes though he had knowledge of Respondent attending two of the courses because Judge Squires also attended those courses. (Tr. 25,27,31, 138)

Findings of Fact and Conclusions of Law

We find the testimony of Hunter, Judge Squires and Maurice to be credible and note that Respondent

displayed a lack of knowledge of bankruptcy law in connection with the Maurice case.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following rules of Professional Conduct: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(0(1); failing to act with reasonably diligence in representing a client, in violation of Rule 21.3; bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1; using means in representing a client that have no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, in violation of Rule 8.2(a); engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or legal profession into disrepute in violation of Supreme Court Rule 771.

Counts IV and VI and X

Complaint

In 1984 Respondent represented Tracy Greenwood, successor administrator of the estate of John Gilbert Greenwood in the consolidated cases of Estate of Greenwood, 84 P 62 and Greenwood v. NIGAS, 84 L 179, in the Thirteenth Judicial Circuit.

On November 23,1993, the Circuit Court of LaSalle County granted a preliminary injunction in favor of NIGAS. Respondent appealed to the Third

District Appellate Court of Illinois on behalf of Greenwood, alleging that the order was improperly entered in Will County. Briefs were filed by both parties. In April 1994, Respondent filed a motion to strike the appellee's brief, alleging that

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the brief contained the facsimile signature of E. Kent Ayers. counsel for NIGAS, rather than an original signature. NIGAS maintained that the brief bore an original signature, and that assuming arguendo that the brief did contain a facsimile signature, it would still comply with Illinois Supreme Court Rule 137.

At all times relevant to this complaint Rule 137 provided in part that "If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion or other paper is signed in violation of this rule, the Court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the party or parties the amount or reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney fee." Moreover, at all times relevant to this complaint. Rule 137 provided that the remedy for a signing in violation of the Rule is the imposition of a sanction and not striking the brief.

On April 21, 1994. the Appellate Court for the Third District denied Respondent's motion to strike. On June 15, 1994, Respondent filed a motion for supervisory order before the Supreme Court of Illinois asking that NIGAS' brief be stricken because it was not signed. NIGAS responded to the motion on June 21,

1994 contending that the question of whether the signature complied with Rule 137 had been addressed twice before on a prior appeals. NIGAS requested that Respondent be sanctioned-for filing a spurious motion. - On June22, 1994, the Supreme Court of Illinois denied the motion for supervisory order. On July 19, 1994, the Court sanctioned Respondent, and ordered him to pay attorney's fees and other expenses incurred by NIGAS in defending the motion for supervisory order. Respondent's purpose in filing the motion was merely to harass or maliciously

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injure Ayers.

Between November, 1990, and January 7, 1994, two judges recused themselves in both matters and two motions for change of venue filed by Respondent had been granted. By letter dated December 15, 1993, Respondent complained to Ray Breen (Executive Director of the Judicial Inquiry Board) that Judge Stephen D. White had made "racial slurs" against his client. He also complained that Judge White had prohibited his client from collecting on her judgment. On January 7, 1994, Respondent filed a motion to substitute judges for cause in case numbers 84 P 62 ad 84 L 179, in which Respondent alleged that Judge Stephen D. White's decisions were racially motivated. Respondent stated therein that "On December 10, 1993, and at the request of NIGAS, Judge White directed that TRACEY GREENWOOD appear before him on January 7, 1994, for no specific purpose, other than to be asked whether she can read, and whether she can add two and two, things that he would never ask a white person." (emphasis in original) Respondent also suggested that Judge White favored the Northern

Illinois Gas Company (NIGAS) because of a personal and business relationship with the company. On January 7, 1994, Judge William R. Banich conducted a hearing on the motion to substitute Judge White for cause. Judge Banich found no evidence to support the allegations, and denied the motion. Respondent then filed a motion to substitute judges as a mailer of right.

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know. that -such action would serve merely to harass or maliciously injure in violation of Rule 1.2(f)(1) of the Illinois Rules of Professional Conduct; bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct; using means to represent a client that have no substantial purpose

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other than to embarrass, delay, or burden a third person in violation of Rule 4.4 of the Illinois Rules of Professional Conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

Respondent admits that on January 7, 1994, he represented Tracy Greenwood, successor administrator of the estate of John Gilbert Greenwood in the consolidated cases of Estate of Greenwood 84 P 62, and Greenwood V. NIGAS 84 L 179, in the Circuit Court of LaSalle County. Respondent further admits that on January 7, 1994 he filed a motion to substitute judges for cause in case numbers 84 P 62 and 84 L 179, in which he alleged that Judge Stephen White's decisions were racially motivated. Respondent also admits that on January 7, 1994 Judge William R. Banich conducted a bearing on the motion to substitute Judge White for cause, and denied the motion. Respondent denies the remainder of the allegations contained in these counts.

Evidence

Associate Judge William R. Banich of the 13th Judicial District testified that in January of 1994 he was assigned to preside over a motion for change of judge filed by Respondent in the Estate of John Greenwood versus Northern Illinois Gas Company Judge Banich testified that he came in from the North courthouse to bear the motion. As Judge Banich recalled, the motion alleged Judge

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White had made some comments regarding the administrator of the estate which had some racial overtones. Judge Banich also recalled that the motion alleged Judge White did not have sufficient legal knowledge to hear the case. Respondent based this assertion on certain issues in the case that Judge White had ruled upon being reversed on interlocutory appeal. Judge Banich heard oral arguments and denied the motion. (Ev. Dep.7- 8, 37)

Steven White testified that he is a judge in the Twelfth Judicial Circuit in Will County. In December of-1 993 Judge White presided over the cases of Estate of Greenwood and Greenwood versus NIGAS by assignment of the Supreme Court. Respondent represented Tracy Greenwood in those proceedings, Judge White testified he has no personal or business relationship with NIGAS aside from paying his gas bill. Judge White further testified that there was nothing that prevented him from being fair and impartial in rendering opinions or decisions in the case and that none of the decision he made in the cases were based upon Tracey Greenwood's race. Judge White has completed the Greenwood V. NIGAS case but he is still assigned to the Estate of Greenwood case. Tracy Greenwood is the administrator of the estate and Respondent continues to represent the estate. Judge White acknowledged that he removed Tracy Greenwood as the administrator of the estate and that Respondent appealed that ruling to the Third District Appellate Court which ruled in Greenwood's favor based upon a lack of proper notice. tr. 284-285, 287-288, 290, 292, Res. Ex.3- A)

Kent Ayers testified he is an attorney who practices in Joliet, Illinois and that he represents Northern Illinois Gas ("NIGAS"). Ayers testified he was involved in the case of Tracy Greenwood v. NIGAS. The verdict in the trial court litigation was, as Ayers recalls, $330,000.00 against NIGAS which was reduced by finding Greenwood 90 percent contributorily negligent so

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Greenwood was awarded $33,000.00. (Tr. 164-165)

Ayers does not know of any relationship Judge White had with NIGAS on or before December 10, 1993. Respondent did not provide Ayers with any evidence regarding the alleged relationship between Judge White and NIGAS though Avers conducted his own investigation because he was concerned a conflict might exist. Ayers' investigation revealed no relationship between Judge White and NIGAS. Ayers further testified that he did not hear Judge White make any racial slurs on or off the record regarding Tracey Greenwood and added that he has never heard anyone other than Respondent accuse Judge White of making such comments in any context (Tr. 166-167,171).

Jack Ardaugh testified he is an attorney practicing with Kent Ayers and he was involved in the Greenwood v. NIGAS case. Ardaugh, like Ayers, knows of no personal or business relationship that Judge White had with NIGAS though he did not personally decide the matter. Ardaugh further testified that respondent never provided him with any details beyond the information included in his pleadings regarding Judge White's alleged personal relationship with NIGAS. (Tr. 179-180, 195-196, Admin. Ex. 52).

Ardaugh described Respondent's motion practice in the NIGAS case as including numerous motions for change of judge that delayed and obstructed the procedure. Collectively Ardaugh believes there were twelve judges assigned to the Greenwood cases. To the best of Ardaugh's recollection NIGAS did not file any motions to substitute judges. Ardaugh testified, however, that based on his experiences as an attorney some Respondent's motions had a rational basis but others were lacking foundation in either law or fact. In Ardaugh's opinion the delays

caused by these motions cost NIGAS in excess of tens of thousands of dollars. As an example of Respondent's

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motion practice Ardaugh recalled a letter Respondent sent him and Judge White wherein Respondent stated he could not appear in Will County for a hearing on a temporary restraining order because Judge White was not assigned to Will County but rather, was assigned to LaSalle County. (Tr. 175-176, 184, 187, 189-190, 196-197, 199-203, Admin. Ex. 21a and 21b)

Ardaugh recalled appearing before Judge White on January 7, 1994, in the Greenwood vs. NIGAS matter but had no recollection of Judge White making any racial slurs with regard to Tracy Greenwood at that or any other time. Ardaugh acknowledged, however, that be was not with Judge White every minute he was in the courtroom. Ardaugh testified he was contacted by and spoke to an individual from the Judicial Inquiry Board regarding Respondent's allegations in reference to Judge White and alleged racial slurs made against Tracy Greenwood. Ardaugh informed the individual from the Judicial Inquiry Board that he did not hear Judge White utter any such comments. tr. 178-179, Admin. Ex. 52)

Ardaugh testified he was familiar with allegations by Respondent regarding the signature of Kent Ayers being affixed to a brief by facsimile. The appellate court ruled against Respondent on that issue. Respondent then raised the issue on a motion for a supervisory order before the Illinois Supreme Court, Ardaugh expended 6.7 hours in defense of the motion. (Tr. 177-178, 191, 193, Admin. Ex. 30)

Judge Banich testified he never had any conversations with Judge Carter regarding

Respondent's making motions for substitution though he believes they may have spoken about Respondent's lawsuit filed against Judge Carter. Judge Banich testified that he has no recollection of Judge Carter being offended at being named as a defendant in that case. Judge Banich recalled a discussion regarding whether there should be a rule for motions for substitution of judge and

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remembered Respondent was a peripheral subject of the conversation. Judge Banich denied that Respondent was the reason for the adoption of the rule. The rule was, however, the reason a hearing regarding the motion for substitution was held so quickly in the Greenwood v. NIGAS case. (By. Pep. 40-43, By. Dep. 50)

John Betts testified he had observed Judge White in court prior to this time in the Estate of Greenwood case and that in that case Judge White held hearings without notice, held hearings outside LaSalle county and made disparaging remarks about African-American and Hispanic persons. Betts testified that based upon his observations Judge White's behavior in the Greenwood matter was unsatisfactory, Specifically Betts testified Judge White made comments suggesting he was afraid to be on the streets of Joliet due to the African-Americans and Hispanics who reside there. Betts further testified that Judge White wondered aloud where the Greenwoods could read and write Betts testified that at the time these statements whether made the litigants and some spectators were present, but later testified that he never said the litigants had been present. Betts did not believe Respondent was

present when these remarks were allegedly made. (Tr. 770-771, 776-778)

Findings of Fact and Conclusions of Law

We find no evidence supporting Respondent's contention that Judge White made racially motivated comments directed toward Tracey Greenwood and, therefore, find that Respondent's Motion for Change of Judge from Judge White to have been a delay tactic. We further find Respondent's letter to the Judicial Inquiry Board to have been for the purpose of harassing Judge White.

Count IV

We find the Administrator proved by clear and convincing evidence that the

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Respondent violated the following Illinois Rules of Professional Conduct: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(f)(1); bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1; using means to represent a client that have no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4.4; and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5)

Count VI

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following rules of the Illinois Rules of Professional Conduct: asserting a position on behalf of a client that serves merely to harass or maliciously injure in violation of Rule 1.2(f)(1); making a statement the

lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a); and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5).

Count X

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct: making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a); engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Count V

Complaint

On June 18, 1991. Respondent and attorney Kevin Kelly filed their appearances in the Circuit Court of LaSalle County on behalf of Donna Fegley in Fegley vs. Johnson, 90 F 198. On June 24, 1991, Kelly filed a verified petition for change of venue, alleging that Judge H. Chris Ryan was prejudiced against him. The petition was granted on June 26, 1991, and the case was reassigned to Judge Cynthia M. Raccuglia.

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On November 5, 1991, Respondent filed a motion to continue and a motion to disqualify Judge Raccuglia, alleging that she was prejudiced in favor of

his opponents. Respondent charged that Judge Raccuglia had become "an advocate" on behalf of opposing counsel, had advanced the date of the pretrial and was unwilling to stay the proceedings in the trial process in order to afford his client the opportunity to utilize the appellate process. Judge Raccuglia denied both motions on November 15, 1991.

On February 24, 1992, Respondent filed a memorandum in support of his November 5, 1991 motion to disqualify. In that memorandum Respondent stated that Judge Raccuglia's father had a referral agreement with counsel for Johnson. He also produced a 1988 letter that Judge Raccuglia had written to Respondent while she was a practicing attorney. In the letter. Judge Raccuglia asked for clarification of an issue, and mentioned the possibility of filing a Section 2-611 motion against Respondent for pleading untrue allegations without reasonable cause. Based on the motion Judge Raccuglia excused herself and the case was reassigned to Judge Robed H. Adcock. On October 7, 1993, Judge Adcock recused himself. On October 12, 1993, Judge Howard Wampler was assigned to the case, Judge Wampler recused himself on October 18, 1993 and the case was reassigned to Judge Charles E. Marshall. Respondent then filed a motion to quash service of process. On November 23, 1993 Judge Marshall denied Respondent's motion to quash and ruled that proper service had been made on Respondent's client, Donna Fegley. On that same day, Respondent filed a motion to substitute judges as a matter of right. Judge Marshall denied Respondent's motion. Respondent also filed that day a petition for substitution of judges for cause, alleging that opposing counsel had participated in a case referral agreement

with Judge Marshall for several years Judge James Lanuti conducted a hearing on this petition instanter. Judge Lanuti determined that

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Respondent's allegations were "untrue and made without any basis in fact or law," and denied Respondent's motion. Respondent's allegations concerned the judge's qualification or integrity because they indicated that Judge Marshall was biased in favor of Respondent's opponents, that he maintained a relationship with opposing counsel which undermined his impartiality and tat he could not fairly administer justice in the proceedings. Respondent's statements which indicated a lack of integrity by Judge Marshall were false. Respondent's repeated motions and petitions to disqualify judges were filed merely to harass or maliciously injure the judges against whom there were filed, and Respondent had no basis for doing so and that they were frivolous.

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure in violation of Rule 1.2(f)(l) of the Illinois Rules of Professional Conduct; making a statement of material fact or law to a tribunal which a lawyer knows or reasonably should know is false, in violation of Rule 3.3(a(l)) of the Illinois Rules of Professional Conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and engaging in conduct that is prejudicial to

the administration of justice. in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.
Answer

Answer

Respondent admits that on June 18, 1991, he and Kevin Kelly filed their appearances in the Circuit Court of LaSalle County on behalf of Donna Fegley in Fegley v Johnson, 90 F 198. Respondent further admits that on June 24, 1991, Kelly filed a verified petition for change of venue,

alleging that Judge H. Chris Ryan was prejudiced against him. The petition was granted and the case was reassigned to Judge Cynthia M. Raccuglia. Respondent further admits he filed a motion for continuance and a motion to disqualify Judge Raccuglia. Respondent further admits that on February 24, 1992. he filed a memorandum in support of his motion to disqualify. Respondent admits Judge Raccuglia recused herself based on Respondents motion and that the case was reassigned to Judge Robed Adcock who, on October 7, 1993, recused himself. Respondent further admits that on October 12, 1993, Judge Howard Wampler was assigned to the case and on October 18, 1993 Judge Wampler recused himself and the case was reassigned to Judge Charles E. Marshall. Respondent admits filing a motion to quash service of process. Respondent admits Judge Marshall denied Respondent's motion to quash. Respondent denies all other allegations contained in this count.

Evidence

Cynthia Raccuglia testified she is a circuit judge in the 13th Judicial Circuit. In June of 1991 Judge Raccuglia was assigned to family law court where she

presided over the custody matter of Fegley v. Johnson. Respondent represented Fegley in that matter. Respondent testified that while Donna Fegley was arrested and her child was taken from her. Fegley did not want Judge Raccuglia to hear her case. In February of 1992 Judge Raccuglia was presented with a petition for disqualification and a memorandum in support of this motion by Respondent. The petition asserted Judge Raccuglia was biased in favor of Bradley Johnson due to an alleged referral relationship between Raccuglia's father's firm, where Judge Raccuglia once practiced, and Melvin Hoffman, Counsel for Bradley Johnson. Judge Raccuglia initially denied this allegation but testified the motion was well founded in law. Ultimately, however, Judge Raccuglia recused herself from the

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case though she did not feel she was prejudiced. Judge Raccuglia refused to vacate her prior rulings in the case. In her final order, Judge Raccuglia transferred custody of the child from the mother (Donna Fegley) to the father. Raccuglia characterized Respondent's representation of Fegley as vigorous. Fegley filed an appeal and Judge Raccuglia's ruling was reversed. (Tr. 216-220,227-228, 234-235, 236-237, 981, Admin. Ex. 41)

Charles E. Marshall testified he was a circuit judge from late September of 1993 until December 1994. In October of 1993 Marshall was assigned to the 13th Judicial Circuit where he presided over the Fegley v. Johnson case. On November 23, 1993, Judge Marshall entered an order denying Respondent's motion to quash service because he found the court had personal jurisdiction over Donna Fegley. Judge Marshall also denied Respondent's motion for

substitution of judge as matter of right. Marshall based this ruling on the fact that he had already made a ruling in the case (the motion to quash service) on November 24, 1993. Judge Marshall had no recollection of a statutory provision which provided that in the event of the filing of a special and limited appearance, and the denial of such appearance, that parties were not prohibited from ruling any other matter or motion. (23 8-242, 245, 252, Admin. Ex. 41, 55)

Respondent filed a motion to substitute Judge Marshall for cause alleging he could not be fair or impartial because Judge Marshall and opposing counsel (Kelvin Hoffman) allegedly had a referral agreement for several years. Judge Marshall testified that no such agreement existed and that there was no reason that he could not be fair and impartial in presiding over the Fegley v. Johnson matter. Judge Marshall had no recollection of referring any cases to Hoffman in any formal matter though he did give the names of attorneys in Ottawa to clients looking for representation m areas he did not practice in. Marshall received no compensation for such referrals. Judge Marshall is certain

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he gave Hoffman's name to more than one client as a matter of courtesy. Judge Marshall denied the motion for substitution although he admitted that Illinois Court rules prohibit a judge from ruling on motions to change judge for cause when the judge in question is himself. Judge Marshall testified that he did not believe the motion for substitution of judge for cause had any basis. tr. 242-243, 245,253-255, Admin. Ex. 41, 252)

Judge Marshall testified there was a hearing on the motion to recuse before Judge Lanuti who denied

the request. The case was then referred back to Judge Marshall who presided over the matter. Judge Marshall has no recollection of making any finding of delay in a written order. (Tr. 245-246, 253, 256-258)

James Lanuti is presiding judge of the family law division in LaSalle County. In November of 1993 Judge Lanuti was assigned by Judge Carter (the chief judge) to hear a motion to substitute judge in the Fegley v Johnson case. Judge Lanuti testified that before he ruled on the motion to recuse he denied Respondent's request for a continuance of the hearing because Respondent had filed the motion without notice and then asked for time to do discovery. Present at the hearing was Judge Lanuti, Respondent and Hoffman (opposing counsel). As Judge Lanuti recalled Respondent's evidence consisted of testimony that Hoffman had worked for an attorney in the 1970s who had a referral agreement with Judge Marshall. Hoffman worked on some of these cases but had no financial interest in the cases and did not have work with Judge Marshall since the 1970s. Judge Lanuti ruled against the Respondent based on a lack of evidence. Judge Lanuti believes this was about 2:30 p.m. of the day the motion was filed and the same day Judge Marshall denied such motion. Judge Lanuti felt that Respondent should have had some preliminary showing of what the evidence was before filing the motion. Judge Lanuti testified that there might have been a legal basis

for this motion if Respondent had proven the facts he alleged. Respondent testified that Donna Fegley authorized him to file all the motions. (ft. 261-264, 267-268, 271,273-276,280-281,980, Admin. Ex. 41)

Judge Lanuti would have been more sympathetic to Respondent's motion to continue had he felt Respondent presented any evidence in support of his allegations. In Judge Lanuti's opinion Respondent failed to comply with the Rules of Civil Procedure to the extent that they require a lawyer do a preliminary investigation to determine whether there is a basis for bringing a motion. Judge Lanuti never filed a complaint with the ARDC in reference to Respondent. (Tr. 265,267,277-279)

Findings of Fact and Conclusions of Law

We find that Respondent's repeated motions for change of judge to be frivolous and had no basis in law or fact. We believe Respondent's sole purpose for filing these motions was to gain additional time to prepare his case. Furthermore the motions for change of judge caused great logistical difficulties as the Thirteenth judicial Circuit is spread over a large geographical area and such changes require an excessive amount of dashing to and fro. Therefore we can only view Respondent's repeated motions for change of judge as an obstruction of justice.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct: asserting a position on behalf of a client that serves merely to harass or maliciously injure another in violation of Rule 1.2(f)(1); making a statement of material factor law to a tribunal which a lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1); making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity Concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation

of Rule 8.2(a); and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5).

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Count VII

Complaint

In 1993, Respondent represented Martin L. Gibbs in People v. Gibbs 93 CF 69, 93 CM 401,93 TR 2346,93 TR 2347 and 93 TR 2348 in the Circuit Court of Bureau County. On October 19, 1993, following two motions for change of judges, Chief Judge Robert Carter reassigned these matters to Judge Charles B. Marshall. On October 26, 1993, Respondent filed a motion to vacate the order of assignment. Respondent based his argument on the claim that the assignment bad not been made pursuant to the "usual rotation system." Judge Carter denied Respondent's motion on October 27, 1993. In his October 27, 1993 order denying Respondent's motion, Judge Carter held that "THE MOTION TO VACATE ORDER OF ASSIGNMENT are (sic) frivolous, patently without merit, and an improper attempt to interfere with the assignment authority of the Chief Judge." On October 29, 1993, Respondent filed a motion to reconsider, alleging that Judge Carter treated Gibbs "differently from all other parties...and denied the defendant due process and equal protection of the law, in violation of the state and federal constitution," Respondent further alleged that the language used by Judge Carter in denying the October 26, 1993 motion was "unduly harsh and uncivil." Respondent also stated that Judge Carter was prejudiced against him. On November 2, 1993, Judge Carter denied the motion to reconsider.

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity

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concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

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Answer

Respondent admits that on October 26, 1993. he filed a motion to vacate the order of assignment and that order was denied. Respondent further admits filing a motion to reconsider and that the motion was denied. Respondent denies all other allegations contained in this count.

Evidence

Judge Carter, Chief Judge of the 13th Judicial Circuit testified he assigned Judge Marshall to hear the consolidated case of People v. Gibbs. The cases were: a driving under the influence charge; a misdemeanor; and a felony. Judge Carter consolidated these cases for purposes of judicial economy. Respondent filed a motion to vacate that order because he and Gibbs did not want one judge hearing all three cases. Respondent testified that Judge Carter had, at that time, a policy of assigning cases such as these to separate judges. Judge

Carter denied Respondent's motion to vacate the order of assignment. Judge Marshall recused himself from the matters on December 30. (Tr. 403-405, 509, 982-983, Admin. Ex. 46, 47 Res. Ex. 11-A)

Judge Carter testified that he has no usual rotation of assignment of judges when he assigns judges outside a division or outside the county. The judges Judge Carter assigns are not all in one location, they are in three different counties. In making his assignments Judge Carter takes into consideration the various locations of the judges. Judge Carter looks at the case load of potential judges and determines who is available in making such assignments. Judge Carter further testified that he does not use the same method of rotation as chief judge as he used when he was presiding judge of the associate division. Judge Carter testified that there is no statutory requirement or Illinois Supreme Court Rule requirement that, when a motion for substitution of judge is received

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for cause an assignment on that motion must to be made immediately. Judge Carter acknowledged that there is no requirement that such a motion be heard on a certain day. Judge Carter testified that while there is no prohibition in the statutes against filing successive motions to substitute judges there is a prohibition on filing frivolous motions. Judge Carter testified that when he is presented with a motion for substitution as a matter of right he sometimes does not read it but he does investigate motions for substitution for cause. (Fr. 405,409-410, 433435,437.513-514)

Judge Carter denied that he treated Gibbs differently than other parties as alleged in Respondent's motion to reconsider the order of

assignment. Judge Carter testified he did not know Gibbs and did not have any relationship with him. (Tr. 406, 408-409 Admin. Ex.48).

Judge Carter denies that in denying his motion to vacate he used language which was unduly harsh and uncivil, Specifically Judge Carter stated that he did not run against Respondent for the same judicial slot as Respondent alleged. Rather, Respondent lost in the primary and Judge Carter prevailed over the individual Respondent lost to in that primary election. Carter testified that the case was long decided and that he is not prohibited from hearing cases in which Respondent is involved. Tr. 411412, 438441, Admin. Ex. 48)

Findings of Fact and Conclusions of Law

We find Respondent filed the motion to vacate the order of assignment in the Gibbs matter purely for purposes of aggravating Judge Carter and that the motion had no basis in law or fact and Respondent knew there was no basis in law or fact.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct asserting a position on behalf of a client that serves merely to harass or maliciously injure another in violation of Rule 1.2(f)(1); making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer,

or public legal officer, in violation of Rule 8.2(a); and engaging in conduct that Is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5).

Count VIII

Complaint

On August 15, 1991, Respondent filed a special and limited appearance in Estate of Glen Serby 89 P 343, in the Circuit Court of LaSalle County. On March 2, 1992, Judge James A. Lanuti ordered that a citation be issued directing John Betts to appear in Court in that case to show cause why Betts should not turn over assets belonging to the Serby estate. On May 18, 1992, Respondent petitioned for a change of venue as a matter of right. Judge Lanuti granted the motion. The case was reassigned to Judge Cynthia M. Raccuglia on June 4, 1992. On April 6, 1993, Judge Raccuglia recused herself sua sponte. The case was reassigned to Judge Stephen White. On August 12, 1994, Respondent's motion to quash service on the citation was denied. Respondent then filed a motion to change judges for cause, alleging that Judge White was biased because Respondent had accused White of making racial slurs in another case. Chief Judge Carter assigned Judge William Banich to hear the motion to change judges. On the same day, Respondent petitioned to change judges for cause, alleging that Banich also was biased because Banich had previously denied a petition for change of judges for cause in another matter involving Judge White. Chief Judge Carter assigned Judge Cynthia Raccuglia to decide the motion to disqualify Judge Banich. Respondent then filed a motion to disqualify Judge Raccuglia, arguing that she had previously recused herself in the same case. Judge Howard C. Ryan, Jr. was then assigned to hear the motion to disqualify Judge Raccuglia. On August 15, 1994, Respondent sent a facsimile to Chief Judge Carter with what Respondent referred to as "suggestions"

about procedures for addressing motion to change judges. Respondent

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alleged therein that Judge Carter was attempting to "manipulate the outcome of cases by use of the assignment power he claims to have because of his office."

On August 19, 1994, Respondent filed a motion to disqualify Judge Ryan, arguing that Judge Lanuti had tainted Judge Ryan and other members of the "judicial pool" by speaking with them about John Bet. On August 19, 1994, Judge Carter assigned Judge Paul Root to hear the motions against Judges White, Banich, Raccuglia and Ryan. On August 26, 1994, Respondent petitioned to change judges for cause, alleging that Judge Root could not be impartial. At 9:58 am. that same day Respondent sent a facsimile to Judge Root, informing him that Respondent would be late appearing in the case because he had a conflicting court appearance in Chicago. Respondent also instructed the judge not to enter a default judgment against him.

The complaint alleges Respondent engaged in: asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct; making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct; making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. adjudicative officer, or public legal officer, in violation

of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

Answer

Respondent admits that on March 2, 1992, Judge James A. Lanuti ordered that a citation be

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issued directing John Betts to appear in court in 89 P 353 to show cause why Betts should not turnover assets belonging to the Serbia estate. Respondent further admits the case was reassigned to Judge Cynthia Raccuglia on June 4, 1992 and that on April 6, 1993 Judge Raccuglia recused herself sua sponte. Respondent further admits that on August 19, 1994, he filed a motion to disqualify Judge Ryan arguing that Judge Lanuti had tainted Judge Ryan. Respondent admits Judge Carter assigned Judge Root to hear the motions against Judges White, Banich, Raccuglia and Ryan. Respondent denies all other allegations contained in this count.

Evidence

John Betts testified that Glen Serby, his stepfather, died in February of 1988 and his mother died in May of 1989. The estate of Glen Serby was opened when Betts' mother died. Betts testified that in approximately 1990 his stepsister (Sharon Becker) had a citation issued directing Betts to return property belonging to the Serby estate. Becker was represented by William Surin, from Craig Armstrong's office, Betts testified that at the time the citation was filed judges within the Thirteenth Circuit had animosity toward him because he caused a judge to resign his post in disgrace for taking a bribe. Betts testified that Judge

Zwanzig asked him to back off and not pursue having him removed. Betts testified he informed Judge Zwanzig he would not do anything and there was nothing Judge Zwanzig could do to him. Betts testified Judge Zwanzig told him he could do things to Respondent and he could get everyone else to do so also. Betts alleged that after Judge Zwanzig's resignation he -"couldn't have-a traffic ticket heard fairly." Betts further testified that during this period he was in the process of getting all the judges audited by the IRS for failure to report their full income. Betts testified he sent letters to every judge in the circuit about the IRS audits. Betts testified that he was sure he had evidence to support his charges. Tr. 703-706, 709-71 1, 895-896)

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Betts testified that when he found the citation to return property was assigned to Judge Lanuti he called Respondent and informed him he was afraid to appear before Judge Lanuti because he did not feel Judge Lanuti could be him and impartial in any proceeding connected to Betts. Betts based this on the fact that Judge Lanuti testified for the Administrator in ARDC proceedings involving Betts. Betts further alleged that Judge Lanuti tainted the judicial pool by speaking to them about Betts. Betts acknowledged, however. he was not present during any of these alleged conversations with other judges. Betts further asserted Judge Lanuti did this because Respondent on Betts' advice, reported Judge Lanuti's uncle, Joseph Lanuti, to the ARDC. Betts testified Respondent filed a motion for substitution of Judge Lanuti for cause filed on Betts' behalf on May 18, 1992. Betts noted Respondent reflected Betts' concerns in the motion to remove Judge

Lanuti. Betts testified that he signed the verification of the Motion for Change of Judge for Cause and that everything contained in it was true. The motion was allowed as a Motion for Change of Venue as a matter of Right on May 19, 1992. Judge Lanuti based this ruling on the fact that he had made no substantive rulings in the case. Betts testified he does not know why Judge Lanuti converted his motion into a motion as a matter of right but believes he did so in order to deprive him of the right to the automatic motion for substitution. Betts testified, however, that it is the custom in LaSalle County to treat an initial motion for substitution of judge as a motion for substitution as a matter of right. Respondent testified he never filed a motion requesting the order changing the judge be properly characterized, Tr. 714,716 6,727-728,732; 735, 741-742 747,- 896, Admin. Ex. 50)

In addition to the allegations outlined in the motion to recuse, Betts testified that in 1989 he had two cases set for hearing before Judge Lanuti in the criminal courts but was unable to attend. Betts informed the state's attorney's office that he was unable to attend and asked to have the matters

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continued. Judge Lanuti, according to Betts, called that case, the state's attorney denied having spoken to Betts and a criminal contempt citation was issued against Betts. Betts asserted this is something that is simply not done. In addition Betts recounted an appearance before Judge Lanuti's in February of 1989 when, he alleged, Judge Lanuti singled him out and "almost physically" threw him out of the courtroom because he had failed to pay his 1989 Attorney Registration dues. Betts testified Judge Lanuti received campaign contributions

from Craig Armstrong. the attorney representing the plaintiff in the case. (Tr. 735, 737, 739-740)

Judge Raccuglia was appointed to preside in the Estate of Glen Serby on June 4, 1992 and presided until about April 6, 1993 when she recused herself. Judge Raccuglia testified she recused herself because she had words with Betts when he delivered a motion to her house. Betts characterized this conversation as unfriendly though no threats were made to either himself or to Judge Raccuglia. (Tr. 750, 753, 757, Admin. Ex. 50)

In 1993 Judge Steven White was assigned to the Estate of Glen Serby case. On August 12, 1994, Respondent filed a motion to quash service and a motion to substitute Judge White for cause. The motion alleged Judge White had made disparaging racial comments about one of Betts' former clients in the Greenwood v NIGAS case. The motion further alleged that Respondent had reported these alleged racial comments to the Judicial Inquiry Board and that this too would serve to prejudice Judge White though in testimony Betts was unable to recall why he desired a change from Judge White. Betts testified that Judge-White came in, saw the motion and contacted Judge Carter so that it would be assigned to be heard. Also on August 12, 1994, Chief Judge Robert Carter assigned the case to Judge Banich for purposes of an immediate hearing on the motion for change of judge and Betts filed a handwritten motion for Judge Banich to recuse himself Betts testified the motion was

handwritten because Judge Carter had insisted the motion be heard immediately leaving him no time to type it. Betts also filed a motion requesting leave to file

an expanded motion for change of judge from Judge Banich due to the brief period before the motion was scheduled to be heard. Betts believes Judge Carter called Judge Banich right away because it was less than 15 minuets later that he appeared to hear the motion. Betts testified the request for additional time to file an expanded motion was not heard. Bet testified he did not want Judge Banich to rule immediately. Betts also alleged he had a case wherein he and Judge Banich were adversaries and Judge Banich entered into an ex. parte motion. (Tr. 285-286, 414, 760, 765-766, 785-787, 791-795, 797, Ev. Dep. 10-11, Admin. Ex. 50)

Judge Banich testified he never had a business relationship with the law firm of Herbolsheimer and Duncan as was alleged in the motion other than being employed by a law firm that had an agreement to share and jointly maintain library facilities with the Herbolsheimer firm, a relationship he maintained as a sole practitioner. This relationship ended when Judge Banich moved his office out of that building in 1987. Judge Banich testified that he was never referred cases by Herbolsheimer and Duncan and he does not believe anyone in his firm was referred cases by the firm. Judge Banich believes there were situations where he and the Herbolsheimer firm had clients with similar interests involved in the same case but could not recall having worked together with them. Judge Banich continued a library sharing arrangement with the firm after he became a sole practitioner. Respondent farther made reference, in his motion, to Judge Banich's ruling in the Greenwood v. NIGAS motion to substitute judge for cause. Judge Banich testified that he did not connect the Greenwood and Serby cases in his mind and that there was no reason he could not administer justice

fairly in the Serby case. Judge Banich testified Respondent currently represents

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parties before him and that he has never made a complaint to the ARDC against Respondent. (By. Dep. 11-15, 17,20,26-27, 29-30, Admin. Ev. Dep. Ex. 2)

In the motion for change from Judge Banich, Betts raised issues regarding Judge Carter's administrative rules. The nature of these questions was that they did not allow a person time to properly prepare and file documents. Judge Carter testified that he found Respondent's motions to be frivolous, without merit and improper. Judge Carter noted Respondent did not attach any legal precedent to his motion in support of his allegations that Judge Carter denied the defendant due process and equal protection of the law in violation of the state and federal constitutions. Judge Carter denied that he was trying to manipulate the outcome of cases by the use of the assignment power. Judge Carter assigned Judges Banich and Raccuglia to hear the motions because they were available and his philosophy is to hear such motions with dispatch in order that they not be used as "cheap" forms of continuances. Judge Carter testified that when a motion for substitution is filed and brought to his attention he immediately enters an order assigning that motion to another judge for hearing. There is, however, no statute or supreme court rule requiring he do so immediately. The purpose in Carter's assigning the motion to a judge immediately is to have a hearing on that motion as quickly as possible, potentially even that day. The reason for this is to avoid continuances. (Tr. 412, 414, 416, 425. 485-489, 802, Res. Ex. 10A)

Judge Carter then assigned the case to Judge Raccuglia and a motion for change of judge for cause was filed by Respondent. The motion alleged that Judge Raccuglia had "fixed" another case. The motion further asserted that because Judge Raccuglia had already been a judge in the case and had recused herself she should not hear this motion. Judge Raccuglia did not recuse herself from considering the motion of change of judge because she felt she could be unbiased in hearing the

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motion. (Tr. 222,224-225,414, 805, 806, Admin. Ex. 50)

Judge Raccuglia testified she presided over other cases wherein Respondent was counsel in the civil division and continues to preside in cases in the criminal division in which Respondent is representing parties and has never had problems with Respondent in those cases. Judge Raccuglia never formally made a complaint to the ARDC about Respondent. Judge Raccuglia testified that she has, from time to time and very rarely, bad litigants request a change of judge from her court to another courtroom. (Tr. 226-227,229)

The motion to remove Judge Raccuglia was assigned to Judge Ryan and set for hearing the following Monday. Respondent filed a motion for change of judge from Judge Ryan for cause on August 19, 1994. The purpose for this motion, Betts testified, was that Judge Lanuti, who he alleged to be a close friend to Judge Ryan. testified at the ARDC hearing regarding Betts and had spoken to other judges about Betts' reputation. Betts testified he based this belief on his seeing Judge Lanuti and Judge Ryan together often and because he had seen law books in front of Judge Ryan that he had seen in front of Judge Lanuti at an

earlier date. (Tr. 417-419, 815, 817, 819, 822, Admin. Ex. 50)

Judge Howard Ryan testified that he is assigned to the criminal division of the Thirteenth Judicial Circuit in August of 1994 when Judge Carter assigned him to the Estate of Serby for the purpose of hearing a motion to substitute Judge Raccuglia. Judge Ryan believes he was the third or fourth judge assigned to the Serby case. Judge Ryan does not recall conducting a hearing on the motion because Respondent filed a motion for change from Judge Ryan for cause. The motion alleged that Judge Lanuti had tainted the judicial pool by speaking with Judge Ryan about John Betts. Judge Ryan testified the only conversation he might have had with Judge Lanuti regarding Betts would have been to mention that he had been disbarred. Judge Ryan testified there was no

reason he could not be fair and impartial in deciding the motion for change of judge. Judge Ryan testified that it is not unheard of for parties before him to request a change of judge from him and that it has occurred approximately twice. Judge Ryan stated he did not file a complaint regarding Respondent with the ARDC nor did he enter any sanction order against Respondent in the Serby matter. Judge Ryan testified Respondent has had numerous cases before him in the criminal division and there is no reason he would not hear a case wherein Respondent represented a party. Judge Ryan testified he is uncertain whether it is improper to file multiple motions for change of judge and he does not know if he would hold a person in contempt for doing so and he is unaware of any rulings on such an issue. (Tr. 383-392, 396, 398, 416)

The Estate of Glenn Serby case was then assigned to Judge Root and a motion for change from Judge Root was filed on August 26, 1994. Judge Root read the motions to disqualify himself and the motion to disqualify Judge White. Judge Root testified that it was not his understanding that he needed to wait until the motion to substitute himself was ruled upon before he ruled on the motion to substitute Judge White. Judge Root testified he was uncertain whether the notion to substitute him was assigned to another judge at that time. Judge Root testified that Respondent's motion to disqualify himself was based upon an alleged radio station controversy. Judge Root's wife owns a one-half interest in the corporation that owns WJDK in Morris, Illinois, the radio station referred to by Respondent. Judge Root himself has no interest in WJDK and was never informed of any - aspects -of the radio station operations. Judge Root had no knowledge that Betts ever worked at WJDK as was alleged in the motion. Betts testified he did not file an EEOC action or any lawsuits in reference to his firing from WJDK because he was an independent contractor. Additionally, Betts noted in his testimony that, Judge Root had recused himself from a criminal proceeding pending in

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La Salle county against Betts claiming that he could not be impartial- (Tr. 306-308, 310, 315-316, 417418, 823, 825, 896. Admin. Ex. 50)

Judge Root held a hearing and denied the motion far change from Judge White and declared the motions for change following that motion to moot There was no hearing on the motion for change from Judge Raccuglia or most of the other motions,

according to Betts. Respondent represented Betts at that hearing. Judge Root testified he found no evidence to support Respondent's motion for substitution of Judge White and, in fact, Respondent offered no evidence. A motion to vacate Judge Root's order was filed and denied. Judge Root testified that there is no reason he would not be fair and impartial in deciding motions to disqualify the judge and that he was in fact fair and impartial. Judge Root testified he did not enter any sanction orders in connection with the motion to substitute Judge White nor did he make a complaint to the ARDC in the matter. (Tr. 257, 311-313, 319, 419, 806, Admin Ex. 50)

Judge Carter testified that Respondent's multiple motions to change judges was very disruptive to his office. Judge Carter went on to state that there are only 12 judges in the circuit. Twice Carter testified that Five motions to change judges in a short period of time is unusual. Tr. 419, 421,413,426)

Judge Root was unable to recall whether Respondent provided a memorandum on this issue, though he identified a letter from Respondent in which Respondent informed him he was sending a memo: (317, 318; Admin. Ex. 50)

Judge Carter testified that during the pendency of the Serby matter Craig Armstrong was his best friend. Judge Carter testified that he believes he may have heard agreed orders on issue wherein Armstrong represented a party. Judge Carter noted that when he took the bench there was no

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specific rule on how long a judge had to wait to hear cases from his or her former firm' Judge Carter testified that Surin (who represented Betts' stepsister) was hired

by his firm shortly before he took the bench in 1979. Judge Carter acknowledged that while he did not hear cases involving Surin or Armstrong he did assign these cases to other judges. (Tr. 443-446,492, 496)

Judge Carter testified that in his opinion the requirement that before a pleading is filed there must be an investigation into the meritoriousness of the facts and law supporting the motion applies to substitution of judges. Judge Carter testified that there are circumstances under which successive motions for change of judge would be inappropriate. Judge Carter further testified that the language in the motions Respondent filed for change of judge were filled with accusations and included words "like revenge" about Judge Ryan's father, a retired Illinois Supreme Court Justice. Judge Carter testified language such as this has a disruptive impact on the administration of justice. Judge Carter further testified Respondent's motions for change of judge were very disruptive and such motions have a negative impact on the reputation of the legal community and the community general about the way the court system operates. Judge Carter had no independent knowledge as to whether the motions in the Serby case were found to be frivolous. Judge Carter testified that he does not hear any substantive cases where the Respondent or Betts are involved. Additionally Judge Carter has not had a substantive conversation with Respondent since 1988. Judge Carter did not make a complaint to the ARDC regarding Respondent's conduct in the Serby case but did direct Diane Robinson to send the ARDC copies of- motions filed by Respondent. Judge Carter testified he has not sent motions by other attorneys for change of judge to the ARDC. Judge Carter testified that because there

was a lawsuit in which he was named which was connected to a judicial race and that suit was brought by Respondent he was concerned that if he heard cases involving Respondent it

could appear that any decision he made might appear to be influenced by that suit. Betts classified his relationship with Judge Carter as strained due to an adversarial dealing he and Judge Carter had in approximately 1974 and because he contested Judge Carter's election to the bench. Judge Carter testified that canon 2 of the Judicial Code of Conduct is a factor in determining whether to hear cases involving certain individuals. (Tr. 447,451-452,474,492-495,497,502-503 505, 510, 809)

David Carey, the Clerk of the Court for LaSalle County testified he is somewhat familiar with the motions Respondent filed in Greenwood v. NIGAS the Estate of Glen Serby and Fegley Johnson including the motions to substitute judges. Carey testified that the practice of filing repeated motions to change judge does not cause a tremendous amount of turmoil to his office though it adds some work. (Tr. 332, 334)

Respondent testified that he "may have" done some investigation into the facts that he alleged in his motions to substitute judges but was unable to identify any specific investigation. (Tr. 1043-1044)

Findings of Fact and Conclusions of Law

We find Respondent's motions for recusal to be frivolous and to have no basis in law or fact and furthermore find it highly unlikely that he conducted any sort of investigation into the facts alleged in his motions.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct: asserting a position on behalf of a client that serves merely to harass or maliciously injure another in violation of Rule 1.2 (f)(1); making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3 (a) (1); making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, violation of Rule 8.2 (a); and engaging in conduct that is prejudicial to the administration of justice In violation of Rule 8.4(a)(5).

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Count IX

Complaint

On May 26, 1994. Respondent wrote to Ray Breen, who was then Executive Director of the Judicial Inquiry Board, regarding the Chief Judge of the Thirteenth Judicial Circuit, Robert L. Carter. In his correspondence to Breen Respondent alleged that Judge Carter "won't make the circuit clerk follow Illinois Law." Respondent stated tat Judge Carter and the clerk, David Carey were engaged In a political conspiracy:

David Carey's bond failed to comply with Illinois law.. .While you have to understand that I don't know for sure, but I think these issues are being avoided because both Carter and Carey are Democrats. After all, if party unity doesn't mean something, then what does?

The complaint alleges Respondent engaged in: making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; engaging in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

Respondent denies all allegations contained in this count.

Evidence

David Carey the LaSalle County Circuit Court Clerk testified that on or about December 15, 1993 he received a facsimile at his office containing certain allegations regarding Judge Carter and

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Carey's bond. The question raised in the facsimile was whether or not Carey had a proper bond (as required by law) to operate as clerk. The facsimile alleged that Judge Carter had ignored Carey's failure to supply adequate bond because they were both Democrats. Judge Carter received the same facsimile as Carey and believes it was authored by Respondent. Carey denied he and Judge Carter agreed to ignore Carey's alleged failure to post the proper bond. Carey further testified that when he received the facsimiles he spoke with Judge Carter who asked that they contact the proper authorities (the county clerk and the Secretary of State). (Tr. 322, 323, 324, 327, 329, 335, 430, 506, Admin. Ex. 51)

Prior to these allegations Carey testified that no one had raised such a concern about his bond. Carey added that he had the county attorney check the bond when he filed it and that he had called the County Clerk's office and the Secretary of State's office on numerous occasions to verify there was no problem with the bond. Carey believes Judge Carter may have signed his bond as it is required that two circuit judges sign such a bond. It is Judge Carter's understanding that the bond must be approved by two circuit court judges. Judge Carter and Judge Perona (who was elected as a Republican) signed the bond for Carey. Judge Carter observed that he and Judge Lanuti (who was elected as a Democrat) approved the binder. Judge Carter further noted that at some point the bond was signed by Judge Lanuti and Judge Ryan (who was elected as a Republican). Judge Carter denied that he ignored the issue of whether proper bond bad been posted. Judge Carter testified that the information he had was that Carey's bond was "very valid." (Tr. 430-431)

John Betts testified he had occasion to investigate Carey's surety bond. Betts testified the bond did not have the signature of the local agent as is required and the original documents had not been filed with the Secretary of State. (Tr. 840)

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On or about March 8. 1994, March 26, 1994 and April 4, 1994 Carey received three more letters via facsimile. These letters included allegations that Carey's bond was defective and that Carey and Judge Carter were conspiring to cover-up its defects. The facsimiles further alleged that Carey's office unlawfully destroyed court records which caused Respondent's

client, John Betts, great difficulty in obtaining satisfaction of a judgment he received in the Betts v. Mettille small claims case. Carey noted that the faxes appear to have been signed by Respondent and that they were also sent to the Sheriffs department and the County Attorney. Carey testified he telephoned Respondent's office on one occasion to discuss the facsimiles and that he once spoke with Respondent in the court house. The conversation was brief and included Carey asking that Respondent stop by the Clerk's office to review the facsimiles. Following that conversation Carey received very few facsimiles on that issue. Carey's office also provided Betts with information on the record keeping protocol as set forth by the Administrative Office of the Illinois Courts and, he believes, a copy of the index book. Carey believes the same information was provided to Respondent. (Tr. 323-326, 331-332, 339, 351-352, Admin. Ex. 51, 53, 54)

Judge Carter testified that in March of 1994 Craig Armstrong who was, at that time, an attorney in LaSalle County. also received a letter alleging that Judge Carter and Carey were conspiring to coverup Carey's lack of proper bond. Armstrong gave Judge Carter that letter between two and four months later. (Tr. 427)

Respondent-testified he does not believe he ever spoke to Betts about the facsimiles. Respondent further testified Betts has never indicated to him, and he never asked, who authored the facsimiles. (Tr. 1048)

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Findings of Fact And Conclusions of Law

We find Respondent sent the correspondence to the named parties and that he did so in an effort to harass David Carey and Judge Carter.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct: making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2 (a); engaging in conduct that is prejudicial to the administration of Justice, in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Count XI

Complaint

On March 8; 1994, Respondent wrote to Dan Meuller, in the Administrative Office of the Illinois Supreme Court. Respondent alleged that David Carey, Clerk of the Circuit Court of LaSalle County, had improperly destroyed an active file in the case of Betts v Mettille, 88 SC 2538, On April 4, 1994, Respondent wrote to Jim Baker, Vice-President of Western Surety Company, the company which provided the Circuit Court Clerk's surety bond. He stated that "The Chief Judge, fellow democrat (sic) of Carey, wants to just ignore the matters. That's been forwarded onto the Illinois Judicial Inquiry Board for them to sort out."

The complaint alleges Respondent engaged in: making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; engaging

in conduct that is prejudicial to the administrat... of justice in

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violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

Respondent denies all allegations contained this count.

Evidence

John Betts testified he was a pro se plaintiff in the Betts v. Metteille case, a small claims case for collection of fees. Betts received a judgment in the matter in 1988 or 1989. Betts testified that subsequent to the entering of the judgment he required the case file and the documents contained within it in order to have the sheriff sell the property that Meteille owned. Betts testified that because the documents were not available he suffered a pecuniary loss. Upon discovering the file had been destroyed Betts and Poppy Mitchell, a clerk in the office of the Circuit Court Clerk, went to see Judge Carter. Betts testified that Judge Carter said he could not believe they would destroy a file that was still active, Judge Carter then, according to Betts, sent him to Judge Marshall to have Marshall sign a memorandum of judgment for him Betts then filed the memorandum of judgment but the sheriff would not sell off the property because, Betts testified, he did not have the court file. Beds testified that as a result he lost about $40.OOO. (Tr. 836-839)

Daniel Mueller testified that he is with the Administrative Office of the Illinois Courts and that in

1994 he was liaison for the Office of the Courts; In that capacity Mueller assisted County Court Clerks in keeping records, On or about March 8, 1994 Mueller received a facsimile from, he believes, Respondent containing a claim that Carey was unlawfully destroying court records. Mueller testified he has no way of knowing whether Respondent actually sent the facsimiles as the

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machine from which the letter was sent did not provide identification on the document. Mueller and Carey testified that a manual on record keeping governs the destruction of court files and requires that the Administrative office examine the records prior to destruction. Mueller testified that in 1988 (the time at issue) the procedure for destruction of small claims records was that the clerk would, after three yeas, fill out a form indicating his intent to destroy the court records and identify those they intended to destroy and certify that they are no longer of legal value. Once the Administrative Office of the Courts receives the form and gives approval the file is destroyed without being microfilmed so long as the judgment has been entered in a judgment index book. All other court records are microfilmed prior to destruction. The procedure was the same in 1994 and, he believes, remains the same as of the date of this hearing. Mueller testified that when he received the facsimile he sent a copy to Carey. Mueller also called Carey and asked if he was having a problem with small claims cases and whether he needed assistance. Neither Carey nor Mueller can recall receiving any other complaints regarding destruction of small claims files by Carey's office. Mueller does not believe he responded to

Respondent's letters in writing nor did he speak to him by phone. Carey testified that the allegations of improper destruction were never found to have occurred by any court or administrative agency. (Tr. 325, 327, 330-331, 335, 338, 341, 345, 364-369, 371, 373-374, 377, Admin. Ex. 53)

James Herbert Baker testified that he is Claim Counsel Vice President for Western Assurance Company. -a company that writes bonds for public official notaries. Western Assurance held the public official bond for Carey in 1994. Baker identified a facsimile received by his company on April 4, 1994. When Baker received the facsimile he wrote Respondent and requested a clearer copy of page two as it was obscured. Respondent then forwarded a clearer copy by facsimile. Baker also

sent a copy of the fax to Carey. Carey responded and Baker sent a copy of that response to Respondent. Baker does not believe Respondent sent any documentation in supped of his contentions. (Tr. 357-359. 361-362, Admin. Ex. 54)

Findings of Fact and Conclusions of Law

We find by clear and convincing evidence that Respondent did send these facsimiles and base this belief upon the fact that when Baker requested from Respondent a clearer copy of a page of the fax he received that copy. In our view this negates Respondent's assertion that someone else sent the facsimiles. It sketches credulity to believe that another party not only sent the facsimile to Mr. Baker but also intercepted the letter from Baker and responded to it without Respondent's knowledge.

We find the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Count XII

Complaint

As of May 12, 1988, Respondent had not been admitted to practice in the U.S. District Court for the Central District of Illinois. On that date Respondent appeared before the U.S. District Court for the Central District of Illinois. In 1988, Local Rule 1(E) of the United Sates District Court for the Central District of Illinois provided that "[a]ny person who, before his or her admission to the bar of this Court...exercises in this District any of the privileges of a member of said bar in any action or proceeding pending in this Court, or who pretend to be entitled to do so. may be adjudged

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guilty of contempt of Court." Respondent's appearance on May 12, 1988 violated the regulations of the legal profession in the U.S. District Court for the Central District of Illinois.

The complaint alleges Respondent engaged in: practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction and engaging in conduct that is prejudicial

to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

Answer

Respondent admits he appeared before the U.S. District Court for the Central District of Illinois on May 12, 1988 but denies all other allegations contained within this count.

Evidence

Respondent testified that on May 12, 1988 he appeared in the case of Betts v. Wilson on behalf of John Betts though he stated he had no independent recollection of that. At that time Respondent was aware of local Rule 1(E) of the Federal Court. Central District of Illinois, regarding unauthorized practice of law. Respondent testified that he could not recall if he was aware in 1988 that the Central District of Illinois had a rule regarding unauthorized practice nor could he recall stating he was aware of such a rule at his deposition in December of 1996. Respondent testified that when he appeared in the Betts v. Wilson case in the Central District he believes he was authorized to practice in the Central District. (Tr. 548-550, 552, 559)

Respondent recalled a criminal contempt proceedings being instituted against him for his appearance on May 12, 1988 in the Central District Court and recalled Judge Mills presiding in that case. Respondent believes there was an appeal filed regarding his conviction for criminal contempt and the contempt finding was affirmed. (Tr. 560-561, 563. Admin. Ex. 57 and 58)

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Betts represented Respondent in the criminal contempt case and Tom Karmgard was then an assistant U.S. Attorney. Karmgard submitted a

complaint regarding Respondent to the ARDC and Betts prepared a response. Betts conducted an investigation and found several other attorneys who were not licensed in the Federal Court, Central District of Illinois and no action was taken by the ARDC against any of them. (Tr. 884, 848, 854, Res. Ex. 1)

Betts testified he researched whether there was a rule applicable in the Central District in reference to admission to practice and determined local rule 1 (E) was invalid because it was not put out for public comment prior to enactment. Further, Bet testified, the executive committee of the Seventh Circuit ordered that all rules not put out for public comment were to be withdrawn and replaced. (Tr. 863-864)

Betts testified that at that time the clerk of the district court maintained attorney admission records on file cards. Betts went to the court and was unable to find a card reflecting that Respondent was admitted to practice in the central district. Betts testified he then told Respondent to be admitted to practice in that district and Respondent did so. After his initial search another search was run and Respondent's admission card was found showing Respondent was admitted January 19, 1989. Betts testified he ran such search to show Judge Mills what happened. Ultimately, Betts testified, the matter was closed. Tr. 868-870, 872- 873, 897, Res. Ex. 26)

Respondent testified that he was, in fact, admitted to the Central District, that he was admitted- in Peoria in 1988 or 1989. Respondent acknowledged he never attended a swearing in ceremony of any sort in the Central District. Respondent believed he had a certificate evidencing authorization to practice in the Central District but when he looked he was unable to

locate one. Respondent believed he had been licensed to practice in the Central district because he had filed

some documents there. Respondent testified when it was brought to his attention that he was not admitted in the Central District he again paid his fee and submitted his form for admission. (Tr. 955- 956, 959, 1038-1040, Res. Ex. 26)

Findings of Fact and Conclusions of Law

We find Respondent's allegations of poor record keeping on the part of the District Court to be without credibility.

We find the Administrator proved by clear and convincing evidence that the Respondent engaged in practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; and engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

Count XIII

Complaint

On or about October 17, 1991, Johanna R. Yeager was injured during the course of her employment with Today Cartage, Inc., while using a pressure washer. On or about October 26, 1991, Respondent and ten-attorney John A. Betts, agreed to represent Ms. Yeager before the Illinois Industrial Commission in matters relating to the October 17, 1991 incident. On or about November 4, 1991, Respondent and Betts, on behalf of Ms. Yeager, filed an Application for Adjustment of Claims before the Illinois Industrial Commission. The Secretary of the Commission docketed the mailer as Johanna Yeager v. Today Cartage Inc number 91 WC 57188. Between November 4, - 1991 and January

12,1995; Respondent took no action to pursue case number 91 WC 57188. On January 12, 1995, the Industrial Commission issued an order dismissing case number 91 WC 57188 for want of prosecution. The Industrial Commission notified Respondent of the dismissal on or about March 3, 1995, and Respondent knew or should have known of the dismissal shortly

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thereafter. In 1995, Respondent knew that Betts had been disbarred on September 27, 1993, and that Beds could no longer represent Yeager in matters relating to case number 91 WC 57188. Respondent did not advise Ms. Yeager that case number 91 WC 5788 had been dismissed or take action to reinstate the case. Between November 4, 1991, and March 31, 1995, Ms. Yeager telephoned Respondent between 20 and 30 times to inquire as to the status of her case. Respondent returned only three telephone calls to Ms. Yeager during that time. In late 1994 or early 1995, Respondent telephoned Ms. Yeager and left a message on her answering machine. Respondent's message to Yeager was the he had received a demand letter from the defendant and that everything was "going fine." Respondent telephoned Ms. Yeager on Or about March 31, 1995, but Ms. Yeager was not at home. Respondent left a message for Ms. Yeager with her son stating that "everything was settled." Respondent's statements concerning the status of case number 91 WC 57188 were false at that time that he made them because case number 91 WC 75188 had been dismissed. On or about March 31, 1995, Ms. Yeager discovered that case number 91 We 57188 had been dismissed and hired a new attorney to represent her in that matter.

The complaint alleges Respondent engaged in: failing to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Illinois Rules of Professional Conduct failing to keep a client reasonably informed about the status of a matter in violation of Rule 1.4 of the Illinois Rules of Professional Conduct; failing to make reasonable efforts to expedite litigation consistent-with the interests of the client in violation of Rule 3.2 of the Illinois Rules of Professional Conduct; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation m violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct; engaging in conduct that is prejudicial to the administration of justice in violation of Rule 8,4(a)(5) of the Illinois Rules of

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Professional Conduct; and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

Answer

The Respondent denies all allegations contained in this count.

Evidence

On or about October 17, 1991, Joanna Yeager was injured in a work related accident. Ms. Yeager testified that when she initially met with John Betts at his home he told her she would be retaining Respondent's services as well as his own. Betts testified Johanna Yeager had been a client of his for a long period of time regarding a work related accident. Betts testified he was a licensed attorney at that time and he believes he prepared an application for adjustment of

claim, a contract and some medical releases. Ms. Yeager testified the representation agreement shows John Betts and Respondent as her attorneys and provided for her to pay Respondent and Betts one third of any recovery. Respondent and Betts however, testified the representation agreement called for him to receive the statutory maximum of twenty percent. Betts testified he put Respondent's name on the application to the Industrial Commission with Respondent's permission and that he did this as he believed it was in the best interest of his client as he was encountering difficulties with the ARDC at that time. Respondent testified that he and Betts never had an agreement under which Respondent became transitional counsel for all of Betts' cases. Rather, Respondent testified, Betts had told him that he might put Respondent's name on some of his cases in the event that there might be trouble. Betts was unable, however, to state with certainty that Respondent was aware his name was on this particular case. Ms. Yeager testified that in September of 1993 Respondent did not inform her Betts had been disbarred and could no longer represent her. Respondent, in contrast, testified that he told

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Ms. Yeager that Betts' license to practice law had been revoked. Betts testified Yeager called him often after his disbarment and he told her to call Respondent. Bet was unable to recall specifically when he physically transferred the Yeager file to Respondent though he believes it was within a few days of his disbarment. Respondent cannot recall when Betts told him that he was responsible for the Yeager matter due to Betts' disbarment in fact it is possible that Betts did not tell him at all and Ms. Yeager informed him. Tr. 523-524,

534, 544, 874-873, 880, 899, 901-902, 904, 908, 953. 1048-1051, Admin. Exs, 26, 64)

Ms. Yeager testified she spoke with Betts two or three times and never had written correspondence with him. In September of 1993 Ms. Yeager attempted to locate Respondent by phone when Betts changed his telephone number. Betts testified this occurred when he was disbarred. Ms Yeager further testified she went to his office in person in an effort to locate him. Ms. Yeager testified that no one was at Respondent's office on the occasion she went there in the fall of 1993. On that occasion, however, Ms. Yeager testified she sat outside the door to Respondent's office for four horns. Ms. Yeager testified that per the request of someone in Respondent's office, she sent Respondent physical therapy and doctors bills from Sandwich hospital and Dr. Dale Grimes which related to her accident from mid 1993 through 1994. She never received any response from Respondent with reference to those documents. Respondent in contrast, testified he never received medical records from Ms. Yeager. Furthermore, Respondent testified Ms. Yeager did not provide him with authorization to obtain such records.- Respondent testified he requested the $75.00 required to obtain such records and Ms. Yeager told him she did not have the funds. Respondent further testified he sent a subpoena to a Dr. Grimes and, in return, he received a letter indicating Dr. Grimes had never treated a patient by that name. Respondent testified that when he

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asked Ms. Yeager about it she said the doctor was not telling the truth Tr. 525-526, 534-535, 544-545, 887, 929-930. 933-934, Res. Ex. 20)

Ms. Yeager testified the medical bills were never paid and she knows this to be true because in 1993 a collection agency began "chasing" her. Ms. Yeager informed the collection agency that she had an attorney and provided them with Respondent's name and phone number. Ms. Yeager testified she never had any response from Respondent after referring the collection agency to him. At a later date the collection agency contacted Ms. Yeager and informed her that they had called Respondent's office on numerous occasions between September of 1993 and March of 1994 and left detailed messages on his answering machine as to exactly what they needed. Respondent testified Ms. Yeager had asked him to pay medical bills she incurred prior to retaining his services and he informed her he could not do that because it was unethical to advance money to pay bills etc. Respondent testified that shortly after that Ms. Yeager terminated him as her attorney. Tr. 526-530, 948-949)

Ms. Yeager testified that between November of 1991 and March of 1995 she called the Respondent approximately 150 times, long distance, and left messages at Respondent's office in LaSalle, Illinois. Ms. Yeager testified Respondent never responded to those calls until she informed him she was going to file a complaint against him. When Respondent did return Ms. Yeager's call she did not speak with him rather he left a message with Ms. Yeager' s son, Steve Yeager. Joanna Yeager's sixteen-year-old son testified that he spoke with Respondent when he phoned Ms. Yeager on one occasion. Mr. Yeager testified that he took a message for his mother wherein Respondent said everything was taken care of and that there was nothing to worry about anymore. Mr. Yeager testified

he imparted that message to his mother. Respondent testified that Joanna Yeager phoned

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him between twenty and thirty times and that they did speak on many occasions and left messages on her answering machine. On those occasions, Respondent testified, he told her that the case could take one or two years and that they would wait before having her examined by a physician. Respondent had no recollection of a message from Ms. Yeager wherein she indicated that if he did not respond to her call she would report him to the ARDC. Ms. Yeager testified she did not return that phone call because Respondent had said everything was taken care of and not to worry. (Tr. 530-531, 537; Tr. 545-547, 927-928, 1036)

Respondent testified that on May 3, 1995 he discovered the case had been dismissed with prejudice by the arbitrator. The case was dismissed because he was not receiving notices from the Industrial Commission as his address was not properly recorded by the Commission. Beds testified he received mail from the Industrial Commission addressed to Respondent regarding the Yeager mailer after his disbarment and that he returned that mail to the Industrial Commission. Betts testified that he does not believe he informed Respondent or Ms. Yeager that he had received such mail. Respondent further testified that he never changed his address with the Industrial Commission because lie did not know it was incorrect. When Respondent discovered the case had been dismissed he filed a motion to have the case reinstated. The case was reinstated and set for hearing May 31, 1995. The Respondent noted that in excess of 7,000 cases were dismissed by the Industrial Commission in

1995. After having the case reinstated Respondent phoned Ms. Yeager and spoke with her son to whom he told he had filed the reinstatement motion. Respondent testified he then made an appointment for Ms. Yeager with Dr. Fisher, an evaluating physician, for Thursday. May 11, 1995. Respondent confirmed the appointment with a letter to Dr. Fisher and sent a letter to Ms. Yeager informing her of the appointment. Respondent testified he also called Ms. Yeager and read

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part of the letter into her answering machine. The day prior to the examination, Respondent testified. he called Ms. Yeager again and left a phone message reminding her of the appointment Respondent testified he called her once again the day after the appointment and left a message. On May 15, 1995 Respondent phoned Dr. Fisher's office and found that Ms. Yeager had not appeared for her appointment on the 11th. Ms. Yeager testified that she had no recollection of Respondent making an appointment for her with Dr. Fisher in Chicago. Respondent testified he appeared for the hearing on May 31, 1995 and found another attorney, Peter Lekas, there on behalf of Ms. Yeager. Lekas then filed a motion to have Respondent removed from the case, Respondent did not object and the motion was granted. (Tr. 538, 903, 934, 941-946, 950-952, 1034-1035, 1037, 1047, Res. Ex. 20)

Ms. Yeager testified that Respondent did not tell her between January and March of 1995 that her case bad been dismissed and she discovered this when she telephoned the Industrial Commission. Ms. Yeager was told by the Industrial Commission that Respondent had failed to appear. Following Ms. Yeager's discovery

that the case had been dismissed she obtained the services of Peter Lekas. The case has now been reinstated and settled. Ms. Yeager received approximately $6,893.84 and paid approximately $3,800.00 in medical bills out of this sum, fees she felt should have been paid long before that since that is what Lekas told her was normal in worker's compensation cases. Respondent testified that Ms. Yeager never asked him whether worker's compensation insurance would pay her medical bills. Ms. Yeager had no knowledge that the case was dismissed again while Lekas was representing her until the case was over when Lekas informed her of such. Ms. Yeager testified that she did not file a complaint with the ARDC regarding Lekas, (Tr. 531-532, 537-538, 540-541, 543, 1033)

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Findings of Fact and Conclusions of Law

We find the testimony of the Yeagers to be far more credible than that of Respondent and Betts. Specifically we find it impossible to believe that Betts was receiving notices from the Industrial Commission and not forwarding them to Respondent. The allegations that Betts simply returned the items to the Industrial Commission strikes us as an excuse concocted by Betts and Respondent.

We find that the Administrator proved by clear and convincing evidence that the Respondent violated the following Illinois Rules of Professional Conduct: failing to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3; failing to keep a client reasonably informed about the status of a matter in violation of Rule 1.4; failing to wake reasonable efforts to expedite litigation consistent with

the interests of the client In violation of Rule 3.2; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4); engaging in conduct that Is prejudicial to the administration of justice in violation of Rule 8.4(a)(5); and engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession Into disrepute in violation of Supreme Court Rule 771.

Evidence in Mitigation

Respondent testified that he has engaged in pro bono work including the appeal of one criminal case entitled People of the State of Illinois v. Martin Gibbs) and the trial of a misdemeanor and felony charge against Gibbs. Respondent also represented Susan Knotts in a misdemeanor case that was dismissed and in a civil suit. Respondent represented Mark and Diane Griffiths pro bono in a bankruptcy. Respondent testified he is in the process of representing Beatrice Escatel in a felony case pro bono. Respondent testified he is representing Kenneth Yeager in a delinquent child support case on a pro bono basis. Respondent further testified he represented Robert Jeskowiak in a driving under the influence case and a criminal air pollution case which was a jury trial. Finally, Respondent

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testified he represented Carmen Harris Washkowiak in the defense of a petition to change child custody. Respondent also testified he was appointed to two cases by the Seventh Circuit Court of Appeals. (Tr 1005-1008)

RECOMMENDATION

The purpose of the disciplinary system is to protect the public, maintain the integrity of the legal

system and safeguard the administration of justice. In re March, 71 Il1.2d 382,395,376 N.E.2d 213 (1978). Additionally, the sanction imposed upon an attorney in a disciplinary case should reflect the unique facts of that case. See generally In re Cheronis 114 Ill.2d 527, 502 N.E.2d 722 (1986).

We have determined tat the Administrator proved by clear and convincing evidence that Respondent made statements about judges which he knew to be false or with reckless disregard for their truth or falsity concerning their qualifications and integrity in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct in Counts I, II, III, V, VI, VII, VIII, IX, X and XI. We have determined that the evidence presented clearly indicates Respondent made these statements with no basis in fact and made them for purposes of causing a delay in the proceedings. We note that while Respondent brought out testimony indicating the judges in question did not sanction him for these stratagem this is insignificant for our purposes and not at all dispositive of whether these were actually delay tactics.

However, we cannot stop with the counts involving statements about judges. We further find that Respondent's neglect of the Yeager matter, his efforts to practice law in a jurisdiction where he was not licensed and his communication via facsimile of scurrilous and unfounded accusations regarding an elected official require examination and sanction. Regarding the issue of Mr. Carey's bond we are disturbed by Respondent's accusations

against both Mr. Carey and Judge Carter. We find no reason to believe that Mr. Carey's bond was defective (although that is not at issue in the instant case) and, even if we suspected the bond was defective, we believe this would be simply another instance of the Respondent exaggerating an honest error. While there is no direct evidence that Respondent sent these facsimiles we nevertheless are convinced that the Administrator proved this count by clear and convincing evidence. We base this belief upon the testimony of Mr. Carey that he confronted Respondent with the facsimiles and asked him about them and the testimony of Mr. Baker wherein he stated that he wrote a letter to Respondent requesting a clearer copy of one of the pages and received a response. While we are aware we base this conclusion upon circumstantial evidence we are satisfied that it is appropriate. The Appellate Court of Illinois, First District, ruled that proof of authorship may be based upon direct or circumstantial evidence and in making such a determination the court must view all evidence including issues of credibility most favorable to the proponent. Kotsias v. Continental Bank, 601 N.E.2d 1185, 1187, 235 Ill.App.3d 472, 474 (1992) citing E. Cleary and M. Graham, Handbook on Illinois Evidence §901.1 (5th Ed. 1990). If the court determines after considering the whole of the evidence that it supports a finding of a preponderance of the evidence, the evidence may be admitted. Id. We further note that Respondent's efforts to introduce Respondent's exhibit 43, a letter from David Carey to Jim Baker of Western Surety, were most irregular and while it was admitted when the Administrator dropped her objection, we still

feel this document should have been produced to Administrator's Counsel prior to the day of the hearing.

On the issue of Betts' right to discharge the debt owed to the ARDC, we find Respondent's efforts in this matter to be completely without merit. We find Section 523 of the Bankruptcy Code is clear on this point and Respondent's insistence on pursing the theory that it was, in fact,

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dischargeable, to be the epitome of a violation of Rules 3.1 of the Illinois Rules of Professional Conduct.

On the issue of the neglect of the Yeager mailer, we note that cases involving neglect of client matters have met with imposition of sanctions ranging from censure to disbarment when not combined with other rule violations. The Court has generally held, however, that single instance of neglect and misrepresentation of the stabs of litigation to a client warrants a censure. See e.g., In re Kink 442 -N.E.2d 206, 92 Ill 2d 293 (1982), In re Mason, 522 N.E.2d 1233, 122 Ill.2d 163 (1988). and In re Winn, 469 N.E.2d 198, 103 Il1.2d 334(1984). In any event we feel that this count standing alone would warrant only minor discipline but because it stands with a multitude of other counts, it only aggravates what we feel is the heart of the complaint, the charges involving false statements and frivolous matters.

Regarding the issue of practicing in the central district without a license we find that Respondent was not, in fact, licensed in that court and, therefore, practiced law in a jurisdiction where doing so violated the regulations of the legal profession in that jurisdiction. We base this finding on the records of that court and Respondent's testimony that he could not

recall having ever taken an oath in the central district. As in the count involving neglect in the Yeager case we do not believe this count standing alone, would warrant significant disciple but in the aggregate, with the surrounding counts, we feel this adds to our conviction that Respondent should be subject to significant discipline.

The Administrator asks that we recommend Respondent be disbarred. In support of this she directs us to In re Spears In re Palimsano In re Jafree and Pennie ex rel. Chicago Bar Association v. Metzen.

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In re Jafree is a situation where the respondent was accused in a complaint of having instituted numerous defamatory and frivolous lawsuits, appeals and administrative actions. Jafree 444 N.E.2d 143, 145, 93 Ill.2d 450, 452 (1983). Jafree had filed a multitude of lawsuits in Federal Court naming as defendants the former Illinois Attorney General, various judges, lawyers. lay persons and a former President of the United States. These lawsuits were generally based on employment discrimination and other civil rights violations. The suits sometimes named himself as plaintiff but also were filed on behalf of others. 14. at 145, 452. Once proceedings began before the ARDC Jafree filed several more lawsuits in Federal district court seeking to enjoin the disciplinary process. 14. at 146,453. During the pendency of the disciplinary proceedings Jafree also filed lawsuits under a fictitious names. Id. at 146, 453. Jafree's lawsuits alleged an ongoing conspiracy between the defendants to violate his constitutional rights. 14. at 146, 453. The Court, once they determined they had jurisdiction and that the Administrator had proved by clear and convincing

evidence that Jafree had instituted frivolous and defamatory litigation, resolved that the appropriate sanction was disbarment. 14, at 150, 462.

The Jafree case is substantially similar to the instant case as both Jafree and Respondent have used the court system in an effort to harass members of the judiciary. In addition both Jafree and Respondent alleged that the Administrator of the ARDC was without jurisdiction over them in reference to any proceedings in the Federal district court. In Jafree the court states, "That certain instances of respondent's alleged misconduct occurred before other tribunals does not affect our power, and indeed duty, to consider the propriety of his conduct." 14. at 147, 456. In meting out the disbarment the court noted that it is apparent that filing frivolous and defamatory lawsuits is conduct warranting disbarment. 14. at 148, 460, citing People ex rel Chicago Bar Association. v.

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Metzen 291 Ill. 55, 125 N.E. 734 (1919).

In re Palmisano presents a similar situation. There the Review Board found Palmisano statements regarding judges were sometimes made in retaliation for adverse rulings or actions take by those judges against Palmisano. In re Palimsano Review Rd. Rept. 92 CH 109. We believe this was true in the instant case as well. Respondent engaged in a pattern or harassing conduct and malicious and unfounded statements against, among other, a judge to whom he lost a judicial election. Id. The Review Board recommended that Palmisano be disbarred based on Jafree They found Jafree applicable due to the nature, frequency and repetition of Palmisano's accusations. Id.

The Respondent in the instant case would have us believe that the entire Thirteen Judicial Circuit was stacked against himself and Mr. Betts. We find this unsubstantiated and based on unwarranted suspicion. With the exception of one judge, they all testified that they continue to hear cases wherein Respondent represents parties and Respondent does not request that they be removed. This indicates to us that even Respondent is aware his allegations are baseless. This leads us to the conclusion that Respondent's efforts to remove judges was simply a delay tactic. While delaying a case, or even several cases, alone is not sufficient for recommended severe sanction, we believe that the manner in which Respondent went about these delays warrants a serious sanction.

We are particularly disturbed by Respondent's grasping of minor technicalities and his efforts to suggest that the errors connected to small details is somehow symptomatic of a grand conspiracy through the entire state and federal court system. We must add that often these minor errors did not even occur. Therefore, based simply upon the counts involving Respondent's penchant for repeatedly attempting to remove judges from cases for cause and making frivolous assertions we feel a severe sanction is warranted.

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Finally, we point as evidence of aggravation to the repeated frivolous, baseless and simply ridiculous motions Respondent filed in the instant case. As an example we highlight the absurd motion Respondent filed in an effort to prevent a pre-hearing from being held. In his motion the Respondent boldly stated that telephonic pre-hearing conferences are not permitted

and, in any case he objected to a pre-hearing conference being held without a court reporter. The substance of Respondent's motion indicates a complete lack of investigation. Had Respondent investigated, he would have been aware that all pre-hearing conferences, including the conference Respondent was attempting to prevent, are held in the presence of a court reporter and, other than the initial conference, there is no requirement such conferences be held in person. We single out this motion merely as an example of Respondent's obstructionist behavior. Ultimately we find Respondent's pre-hearing actions to efforts to obstruct justice. We note that the Seventh Circuit Court of Appeals, when faced with the antics of Respondent suspended his privilege to practice law in the district until he complied with the Court's directive to furnish a list of all sanctions leveled against him and demonstrates that all sanctions have been paid in full. In the Matter of John A. Maurice debtor. Appeal of Kenneth A. Kozel 723 Fed.3d 124, 125-126 (1995). The Court leveled this sanction after determining that Respondent had filed a frivolous appeal. The Court determined the appeal was frivolous based upon a lack of jurisdiction in the district court, Respondent's failure to file a timely brief and a lack of merit to the contentions in that brief 14. at 127. Based upon the panel's dealings with Respondent and the evidence presented in the instant case we believe obstructionist behavior on Respondent's part is not limited to his dealings in the Federal Court but instead is the hallmark of his practice. We feel this is a significant matter in aggravation of the rule violations proven in this disciplinary matter.

Therefore based upon Jafree and Palmisano as well as the Respondent's behavior before this panel, we recommend the Respondent be disbarred.

Date: November 5, 1997 s/Vincent F. Vitullo

Vincent F. Vitullo, Chair of the Hearing Panel, with Frances Skinner and Robert Adams, Panel Members, concurring.

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(3)

Supreme Court, U.S.
FILED

NO. 001121 JAN - 8 2001

OFFICE

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH A KOZEL,

Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari
To The Illinois Supreme Court

APPENDIX, VOLUME 3

KENNETH A. KOZEL
PETITIONER
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13 pp

PUBLISHER'S NOTE:

THE FOLLOWING PAGES WERE UNAVAILABLE FOR FILMING:

i AND ii

Constitution 185-187

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Motion of 2-14-00 of the Administrator of the Attorney Registration and Disciplinary Commission for extension of time to file answer to Kenneth Kozel's petition for leave to file exceptions to the Report and Recommendation of the Review Board 191-192

Kenneth Kozel's Motion for leave to file a second supplement to the petition for leave to file exceptions to the Report and Recommendation of the Review Board 193-197

Kenneth Kozel's Attachment to second supplement to petition for leave to file exceptions to the Report and Recommendation of the Review Board (published comments of Illinois attorney Joseph Martan) 197-200

M.R. 16530
STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel) Attorney-Registration and
Attorney - Respondent) Disciplinary Commission

ORDER

This cause coming to be heard on the motion of the respondent, due notice having been given to the Administrator of the Attorney Registration and Disciplinary Commission, and the court being fully advised in the premises;

IT IS ORDERED that the motion for leave to supplement the motion for reconsideration of the order of June 30, 2000, is denied.

Order entered by the court. August 8, 2000

M.R. 16530
STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel) Attorney-Registration and
Attorney - Respondent) Disciplinary Commission

ORDER

This cause coming to be heard on the motion of the respondent, objections having been filed by the Administrator of the Attorney Registration and Disciplinary Commission, and the court being fully advised in the premises;

IT IS ORDERED that the motion for reconsideration of the order of June 30, 2000, disbarring respondent Kenneth Kozel, is denied.

Order entered by the court. August 11, 2000

M.R. 16530
STATE OF ILLINOIS
SUPREME COURT

In re: Kenneth Alan Kozel
M.R. 16530
Attorney Registration and
Disciplinary Commission 96 CH 50

The petitions by the Administrator of the Attorney Registration and Disciplinary Commission and respondent Kenneth Alan Kozel for leave to file exceptions to the report and recommendation of the Review Board are allowed. Respondent is disbarred.

Order entered by the Court. June 30, 2000

USCS Supreme Ct R 10 (2000)

Rule 10. Considerations Governing Review on Certiorari

Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:

(a) a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter; has decided an important federal question in a way that conflicts with a decision by a state court of last resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power;

(b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;

(c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

USCS Const. Amend. 1 (2000)

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

USCS Const. Amend. 14, @ 1 (2000)

Sec. 1. [Citizens of the United States.]

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 USCS @ 1971 (2000)

Voting rights

(a) Race, color, or previous condition not to affect right to vote; uniform standards for voting qualifications; errors or omissions from papers; literacy tests; agreements between Attorney General and State or local authorities; definitions.

(1) All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

(2) No person acting under color of law shall--

(A) in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any election because of an

error or omission on any record or paper relating to any application,
registration, or other act requisite to voting, if such error or omission is not
material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any election
unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 <=2> (42 U. S. C. 1974-74e; 74 Stat. 88) [<=3> 42 USCS @@ 1974 et seq.]: Provided, however, That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, andmaintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

USCS Fed Rules Civ Proc R 52 (2000)

Rule 52. Findings by the Court; Judgment on Partial Findings

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rule 12 or 56 or any other motion except as provided in subdivision (c) of this rule.

(b) Amendment. On a party's motion filed no later than 10 days after entry of judgment, the court may amend its findings--or make additional findings--and may amend the judgment accordingly. The motion may accompany a motion for a new

trial under Rule 59. When findings of fact are made in actions tried without a jury, the sufficiency of the evidence supporting the findings may be later questioned whether or not in the district court the party raising the question objected to the findings, moved to amend them, or moved for partial findings.

(c) Judgment on Partial Findings.If during a trial without a jury a party has been fully heard on an issue and the court finds against the party on that issue, the court may enter judgment as a matter of law against that party with respect to a claim or defense that cannot under the controlling law be maintained or defeated without a favorable finding on that issue, or the court may decline to render any judgment until the close of all the evidence. Such a judgment shall be supported by findings of fact and conclusions of law as required by subdivision (a) of this rule.

USCS Bankruptcy R 7052 (2000)
Rule 7052. Findings by the Court

Rule 52 F.R.Civ.P. applies in adversary proceedings.

Rule 753. Inquiry, Hearing and Review Boards

(a) Inquiry Board.

(1) There shall be an Inquiry Board. It shall consist of members of the bar of Illinois and nonlawyers appointed by the Commission to serve annual terms as commissioners of the court. Nonlawyer members shall be appointed to the Board in a ratio of two lawyers for each nonlawyer. The Commission may appoint as many members of the Board as it deems necessary to carry on the work of the Board.

(2) The Board shall inquire into and investigate matters referred to it by the Administrator. The Board may also initiate investigations on its own motion and may refer matters to the Administrator for investigation.

(3) After investigation and consideration, the Board shall dispose of matters before it by voting to dismiss the charge, to close an investigation or to file a complaint with the Hearing Board.

(4) The Board may act in panels. Each panel shall consist of two lawyers and one nonlawyer as designated by the Commission. The Commission shall designate one of the members of each panel as chairman. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision.

(b) Filing a Complaint. A complaint voted by the Inquiry Board shall be prepared by the Administrator and filed with the Hearing Board. The complaint shall reasonably inform the attorney of the acts of misconduct he is alleged to have committed.

(c) Hearing Board.

(1) There shall be a Hearing Board. It shall consist of members of the bar of Illinois and nonlawyers

appointed by the Commission to serve annual terms as commissioners of the court. Members shall be appointed to the Board in a ratio of two lawyers for each nonlawyer.

(2) The Hearing Board may act in panels of not less than three members each, as designated by the Commission. The Commission shall also designate one of the lawyer members of each panel as chairperson. The majority of a panel shall constitute a quorum and the concurrence of a majority shall be necessary to a decision. In the absence of the chairperson of a panel at a hearing, the lawyer members present shall serve as acting chairperson.

(3) The hearing panels shall conduct hearings on complaints filed with the Board and on petitions referred to the Board. The panel shall make findings of fact and conclusions of fact and law, together with a recommendation for discipline, dismissal of the complaint or petition, or nondisciplinary disposition. The Hearing Board may order that it will administer a reprimand to the respondent in lieu of recommending disciplinary action by the court. The scheduling of matters before the Board shall be in accordance with Commission rules. Proceedings before the Board, including discovery practice, shall be in accordance with the Code of Civil Procedure [735 ILCS 5/1-101 et seq.] and the rules of the supreme court as modified by rules promulgated by the Commission pursuant to Supreme Court Rule 751(a). Information regarding prior discipline of a respondent will not be divulged to a hearing panel until after there has been a finding of misconduct, unless that information would be admissible for

reasons other than to show a propensity to commit the misconduct in question.

(4) Except as otherwise expressly provided in these rules, the standard of proof in all hearings shall be clear and convincing evidence.

(d) Review of Hearing Board Reports.

(1) Review Board. There shall be a nine-member Review Board which shall be appointed by the court. Appointments shall be for a term of three years or until a successor is appointed. Appointments to the Review Board shall be staggered, so that the terms of three members are scheduled to expire each year. No member shall be appointed for more than three consecutive three-year terms. One member shall be designated by the court as chairperson. The Review Board shall function in panels of three, presided over by the most senior member ofthe panel. The concurrence of two members of a panel shall be necessary to a decision.

(2) Exceptions; Agreed Matters. Reports of the Hearing Board shall be docketed with the Review Board panel upon the filing of a notice of exceptions by either party. The respondent or the Administrator may file exceptions to the report of the Hearing Board with the Review Board within 21 days after service of the report to the parties. If neither the respondent nor the Administrator files a notice of exceptions to the Hearing Board report, and the report recommends action by the court, the clerk of the Attorney Registration and Disciplinary Commission shall submit the report of the Hearing Board to the court as an agreed matter. Upon the submission of any matter as an agreedmatter, the clerk of the Commission shall give notice to the

parties of that submission. Within 21 days after submission of the report to the court, the Administrator shall file a motion to approve and confirm the report of the Hearing Board. No response to this motion shall be filed unless ordered by the court on its own motion or pursuant to a motion for leave to respond. Upon receipt of the motion to approve and confirm, the court may enter a final order as recommended by the Hearing Board or as otherwise determined by the court, order briefs or oral argument or both, or remand the matter with directions to the Hearing Board or the Review Board.

(3) Action by the Review Board. The Review Board may approve the findings of the Hearing Board, may reject or modify such findings as it determines are against the manifest weight of the evidence, may make such additional findings as are established by clear and convincing evidence, may approve, reject or modify the recommendations, may remand the proceeding for further action or may dismiss the proceeding. The Review board may order that it will administer a reprimand to the respondent in lieu of recommending disciplinary action by the court. A copy of the report or order of the Review Board shall be served on the respondent and the Administrator.

(e) Review of Review Board Reports.

(1) Petition for Leave to File Exceptions. Reports or orders of the Review Board shall be reviewed by the court only upon leave granted by the court or upon the court's own motion. Either party may petition the court for leave to file exceptions to the order or report of the Review Board. The petition shall be filed within 35 days of service of the order or

report upon the party. The supreme court, or a justice thereof, on motion may extend the time for petitioning for leave to file exceptions, but such motions are not favored and will be allowed only in the most extreme and compelling circumstances.

(2) Grounds for Petition for Leave to File Exceptions. Whether a petition for leave to file exceptions will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered; the general importance of the question presented; the existence of a conflict between the report of the Review Board and prior decisions of the court; and the existence of a substantial disparity between the discipline recommended and discipline imposed in similar cases.

(3) Contents of Petition for Leave to File Exceptions. The petition for leave to file exceptions shall contain, in the following order:

(a) a request for leave to file exceptions;

(b) a statement of the date upon which the report of the Review Board was filed;

(c) a statement of the points relied upon for rejection of the report of the Review Board;

(d) a fair and accurate statement of the facts, which shall contain the facts necessary to an understanding of the case, without argument or comment, with appropriate references to the record by transcript page and exhibit number;

(e) a short argument (including appropriate authorities) stating why review by the Supreme Court is warranted and why the decision of the Review Board should be rejected; and

(f) a copy of the reports of the Hearing and Review Boards and proposed exceptions shall be appended to the petition. The petition shall be duplicated, served and filed in accordance with requirements for briefs.

(4) Answer. The opposing party need not but may file an answer, with proof of service, within 14 days after the expiration of the time for the filing of the petition, or within such further time as the supreme court or a judge thereof may grant within such 14-day period. An answer shall set forth reasons why the petition should not be granted, and shall conform, to the extent appropriate, to the form specified in this rule for the petition, omitting the first four items set forth in paragraph (3) except to the extent that correction of the petition is considered necessary. The answer shall be duplicated, served, and filed in accordance with the requirements for briefs. No reply to the answer shall be filed.

(5) Ruling on Petition.

(a) If the court allows exceptions to an order or report of the Review Board, it may:

(i) enter a final order as recommended by the Review Board or as otherwise determined by the court;

(ii) enter an order remanding the matter with directions to the Hearing Board or the Review Board; or

(iii) accept the matter for further consideration.

If the case is accepted for further consideration, the clerk of the Attorney Registration and Disciplinary Commission shall transmit the record of

the case to the court. Either party may assert error in any ruling, action, conclusion or recommendation of the Review Board without regard to whether the party filed exceptions. The petition for leave to file exceptions allowed by the court shall stand as the brief of the appellant. Remaining briefs shall be prepared, filed and served in compliance with Rules 343 and 344. The parties shall not be entitled to oral argument before the court as of right. Oral argument may be requested in accordance with Rule 352.

(b) If the court denies leave to file exceptions, it may:

(i) enter a final order as recommended by the Review Board or as otherwise determined by the court; or

(ii) enter an order remanding the matter with directions to the Hearing Board or the Review Board.

(6) Agreed Matters. If a petition for leave to file exceptions is not timely filed and if the report of the Review Board recommends action by the court, the clerk of the Attorney Registration and Disciplinary Commission shall submit the report of the Review Board together with a copy of the report of the Hearing Board to the court as an agreed matter. Upon the submission of any matter as an agreed matter, the clerk of the Commission shall give notice to the parties of that submission. Within 21 days after submission of the report to the court, the Administrator shall file a motion to approve and confirm the report of the Review Board. No response to this motion shall be filed unless ordered by the court on its own motion or pursuant to a motion for leave to respond. Upon receipt of the motion to

approve and confirm, the court may enter a final order of discipline as recommended or as otherwise determined by the court, order briefs or oral argument or both, or remand the matter with directions to the Hearing Board or the Review Board.

(7) Finality of Review Board Decision. If exceptions are not filed and the order or report of the Review Board does not recommend disciplinary action by the court, the order or report of the Review Board shall be final.

(f) Duty of Respondent or Petitioner. It shall be the duty of the respondent or petitioner who is the subject of any investigation or proceeding contemplated by these rules to appear at any hearing at which his presence is required or requested. Failure to comply, without good cause shown, may be considered as a separate ground for the imposition of discipline or denial of a petition.

Supreme Ct., R 315 (2000)

Rule 315. Leave to Appeal from the Appellate Court to the Supreme Court

(a) Petition for Leave to Appeal; Grounds. Except as provided below for appeals from the Industrial Commission division of the Appellate Court, a petition for leave to appeal to the Supreme Court from the Appellate Court may be filed by any party, including the State, in any case not appealable from the Appellate Court as a matter of right. Whether such a petition will be granted is a matter of sound judicial discretion. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: The general importance of the question presented; the existence of a conflict between the decision sought to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court; the need for the exercise of the Supreme Court's supervisory authority; and the final or interlocutory character of the judgment sought to be reviewed. No petition for leave to appeal from a judgment of the five-judge panel of the Appellate Court designated to hear and decide cases involving review of Industrial Commission orders shall be filed, unless at least one judge of that panel files a statement that the case in question involves a substantial question which warrants consideration by the Supreme Court. A motion asking that such a statement be filed may be filed as a prayer for alternative relief in a petition for rehearing, but must, in any event, be filed within the time allowed for filing a petition for rehearing.

(b) Time; Contents. Unless a timely petition for rehearing is filed in the Appellate Court, a party seeking leave to appeal must file the petition for leave in the Supreme Court within 21 days after entry of the judgment of the Appellate Court, or within the same 21 days file with the Appellate Court an affidavit of intent to file a petition for leave, and file the petition within 35 days after the entry of such judgment. If a timely petition for rehearing is filed, the party seeking review must file the petition for leave to appeal within 21 days after the entry of the order denying the petition for rehearing, or within the same 21 days must file with the Appellate Court an affidavit of intent to file a petition, and file the petition within 35 days after entry of such order. If a petition is granted, the petition for leave to appeal must be filed within 21 days of the entry of the judgment on rehearing, or if within the same 21 days an affidavit of intent is filed with the Appellate Court, then within 35 days after the entry of such judgment. The Supreme Court, or a judge thereof, on motion, may extend the time for petitioning for leave to appeal, but such motions are not favored and will be allowed only in the most extreme and compelling circumstances.

The petition for leave to appeal shall contain, in the following order: (1) a prayer for leave to appeal; (2) a statement of the date upon which the judgment was entered; whether an affidavit of intent to seek review was filed with the Appellate Court and, if so, the date it was filed; whether a petition for rehearing was filed and, if so, the date of the denial of the petition or the date of the judgment on

rehearing; (3) a statement of the points relied upon for reversal of the judgment of the Appellate Court; (4) a fair and accurate statement of the facts, which shall contain the facts necessary to an understanding of the case, without argument or comment, with appropriate references to the pages of the record on appeal, e.g., R.C7 or R.7, or to the pages of the abstract, if one has been filed, e.g., A.7. Exhibits may be cited by references to pages of the record on appeal, or of the abstract, or by exhibit number followed by the page number within the exhibit, e.g., Pl.Ex. 1, p. 6; (5) a short argument (including appropriate authorities) stating why review by the Supreme Court is warranted and why the decision of the Appellate Court should be reversed or modified; and (6) an appendix which shall include a copy of the opinion or order of the Appellate Court and any documents from the record which are deemed necessary to the consideration of the petition.

(c) Format; Service; Filing. The petition shall otherwise be prepared, duplicated, served, and filed in accordance with the requirements for briefs as set forth in Rules 341 through 344, except that it shall be limited to 20 pages excluding only the appendix.

(d) Records; Abstracts. If an abstract has been filed in the Appellate Court, the petitioner shall file two or, if available, eight copies thereof in the Supreme Court, and for that purpose the clerk of the Appellate Court, when requested, shall release to the petitioner any available copies thereof. The clerk of the Supreme Court shall send notice of the filing of the petition to the clerk of the Appellate Court, who, upon request of the clerk of the Supreme

Court made either before or after the petition is acted upon and at the expense of the petitioner, shall transmit to the clerk of the Supreme Court the record on appeal that was filed in the Appellate Court and a certified copy of the Appellate Court record. If leave to appeal is not granted, any certified papers and, to the extent available, copies of abstracts shall be returned forthwith to the clerk of the Appellate Court.

(e) Answer. The respondent need not but may file an answer, with proof of service, within 14 days after the expiration of the time for the filing of the petition, or within such further time as the Supreme Court or a judge thereof may grant within such 14-day period. An answer shall set forth reasons why the petition should not be granted, and shall conform, to the extent appropriate, to the form specified in this rule for the petition, omitting the items (1), (2), (3), (4) and (6) set forth in paragraph (b) except to the extent that correction of the petition is considered necessary. The answer shall be prepared, duplicated, served, and filed in accordance with the requirements for briefs except that it shall be limited to 20 pages excluding only the appendix. No reply to the answer shall be filed. If the respondent does not file an answer or otherwise appear but wants notice of the disposition of the petition for leave to appeal, a letter requesting such notice should be directed to the clerk in Springfield.

(f) Abstracts; Transmittal of Trial Court Record if Petition Is Granted. If the petition is granted, and to the extent that copies have not already been filed, the appellant shall file 20 copies of the abstract, as filed in the Appellate Court, within the time for the filing of

his brief. If no abstract was filed in the Appellate Court, but the Supreme Court so orders, an abstract shall be prepared and filed in accordance with Rule 342. Upon the request of any party made at any time before oral argument or upon direction of the Supreme Court, the clerk of the Appellate Court, at the expense of the petitioner, shall transmit to the Supreme Court the record on appeal that was filed in the Appellate Court and the Appellate Court record, if not already filed in the Supreme Court.

(g) Briefs. If leave to appeal is allowed, the appellant may allow his or her petition for leave to appeal to stand as the brief of appellant, or may file a brief in lieu of or supplemental thereto. Within 14 days after the date on which leave to appeal was allowed, appellant shall serve on all counsel of record a notice of election to allow the petition for leave to appeal to stand as the brief of appellant, or to file an additional brief, and within the same time shall file a copy of the notice with the clerk of the Supreme Court. If appellant elects to allow the petition for leave to appeal to stand as his or her brief, appellant shall file with the notice a complete table of contents, with page references, of the record on appeal and a statement of the applicable standard of review for each issue, with citation to authority, in accordance with Rule 341(e)(3). If appellant elects to file an additional brief, it shall be filed within 35 days from the date on which leave to appeal was allowed. Motions to extend the time for filing an additional brief are not favored and will be allowed only in the most extreme and compelling circumstances.

The appellee may allow his or her answer to the petition for leave to appeal to stand as the brief of appellee, or may file a brief in lieu of or supplemental thereto. If the appellant has elected to allow the petition for leave to appeal to stand as the brief of appellant, within 14 days after the due date of appellant's notice the appellee shall serve on all counsel of record a notice of election to let the answer stand as the brief of appellee, or to file an additional brief, and within the same time shall file a copy of the notice with the clerk of the Supreme Court. If the appellee elects to file an additional brief, such brief shall be filed within 35 days of the due date of appellant's notice of election to let the petition for leave to appeal stand as the brief of appellant.

If the appellant has elected to file an additional brief, within 14 days after the due date of appellant's brief the appellee shall serve on all counsel of record a notice of election to let his or her answer stand as the brief of appellee, or to file an additional brief, and within the same time shall file a copy of the notice with the clerk of the Supreme Court. If appellee elects to file an additional brief it shall be filed within 35 days of the due date of appellant's brief.

If an appellee files a brief, the appellant may file a reply brief within 14 days of the due date of appellee's brief. If the brief of appellee contains arguments in support of cross-relief, the appellant's arguments in opposition shall be included in the reply brief and the appellee may file a reply brief confined strictly to those arguments within 14 days of the due date of appellant's reply brief. If the brief of the appellee contains arguments in support of cross-

relief, the cover of the brief shall be captioned: "Brief of Appellee. Cross-Relief Requested."

Briefs, pleadings and other documents filed with the Supreme Court in cases covered by this rule shall, to the extent appropriate, conform to Rules 341 through 344.

In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another. Parties may similarly join in reply briefs.

(h) Oral Argument. Oral argument may be requested as provided in Rule 352(a).

Supreme Court Rule of Professional Conduct 8.2.

(a) A lawyer shall not make a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall refrain from conduct which, if the lawyer were a judge, would be a breach of the Code of Judicial Conduct.

Attorney Registration and Disciplinary Commission
Rule 281
Report of the Hearing Board

The report of the Hearing Board shall be prepared by the panel as soon as practicable after completion of the hearing. The report shall be filed with the Clerk. The Clerk shall serve a copy upon the respondent and the administrator.

Attorney Registration and Disciplinary Commission
Rule 311
Review Board Report

The report of the Review Board shall address the issues raised by the parties and need not address any portion of the Hearing Board report with which the parties have not taken issue. The Review Board report may consist of the adoption of the Hearing Board Report. Unanimous reports shall be submitted in the name of the Review Board Panel. When there is a divided vote, the members constituting the majority and the members dissenting or concurring in part shall be named. Any member dissenting or concurring in part may submit a statement of position within a reasonable time following the filing of the report.

The ISBA Board of Governors voted Oct. 27 to reaffirm its 1999 position that Supreme Court Rule 753 be amended to permit personal appearances by attorneys charged with misconduct. The action came in response to a communication from the Attorney Registration and Disciplinary Commission that it has proposed limiting the right to respond when a matter is referred to the Inquiry Board, as described in ARDC Rule 105. The ARDC favors deleting Rule 105 and expanding Rule 55 to allow written responses, if prior opportunities had not been afforded, and personal appearances only at the discretion of the inquiry panel hearing the case. The ISBA Committee on the ARDC urged the Board of Governors to request amendment of Supreme Court Rule 753 to require a charged attorney to appear at the time the case is scheduled, subject to continuance for good cause. The ISBA on Aug. 31,1999, filed a proposed Rule 753 amendment that the Inquiry Board provide a charged attorney zn opportunity to personally appear before it on a specified date and make an oral statement and answer questions. . ."

Two other rule changes proposed by the ARDC were supported by the Board of Governors and the Committee on the ARDC.

Rule 260 would be altered to conform to thepractice of conducting pre-hearing conferences by telephone or in person at the discretion of the chair,and that listed topics would be covered when appropriate during any series of pre-hearing confer- ences.

A new Rule 261 would be added to provide guidance on when a party may move to substitute a hearing panel mem- ber, either for cause or when a judge is involved in a case. Substitutions as of right would not be allowed.

The ARDC will discuss the proposals during its Dec. 8 meeting. Responses may be submitted by Nov. 22 to commission chair Jay Janssen in the Chicago office. Copies of the proposals and summaries may be obtained from the ARDC administrator by calling (312) 565-2600.

(Source: ISBA News, Vol. 41, No. 8, 11-15-00)

Atty. Reg. & Disc. Comm'n, R 260 (2000)

Rule 260. Prehearing Conferences

(a) Initial Prehearing Conference. A prehearing conference shall be held at the offices of the Attorney Registration and Disciplinary Commission in every case filed before the Hearing Board. As soon as practicable after the filing of the complaint or petition, a member of the Hearing Board who has been designated Chair in the case shall schedule and preside over the prehearing conference. The respondent or petitioner, counsel for respondent or petitioner if any, and counsel for the Administrator shall personally attend the prehearing conference. Upon a showing of good cause, the Chair may excuse the respondent or petitioner from attending the prehearing conference.

(b) Objectives. The Chair is responsible for bringing the case to a full andfair hearing in a timely and efficient manner. In furtherance of this responsibility, the Chair shall conduct prehearing conferences to consider and take action regarding: fair hearing in a timely and efficient manner. In furtherance of this responsibility, the Chair shall conduct prehearing conferences to consider and take action regarding: (1) the formulation and simplification of the issues; (2) the elimination of frivolous charges or defenses; (3) the necessity of amendments to the pleadings; (4) entry into stipulations regarding undisputed evidence and obtaining prehearing rulings on the admissibility of evidence; (5) the identification and limitation of witnesses, including character or expert witnesses;

(6) the possibility of discipline on consent pursuant to Supreme Court Rule 762; (7) the supervision of discovery, including the stablishment of a date by which all discovery must be concluded; (8) the scheduling of the hearing; and (9) any other matters which may aid in the disposition of the action.

(c) Additional Prehearings. The Chair may hold as many additional prehearing conferences as deemed necessary to meet the objectives set forth above.

(d) Order. The Chair shall enter an order reciting any action taken by the Chair and reciting any agreements made by the Administrator and the respondent or petitioner and approved by the Chair.

(e) Status Conferences. In addition to formal prehearing conferences, the Chair may, within his sound discretion, schedule status conferences to be held in person or by telephone.

(f) Sanctions. The Chair shall, in addition to any other sanctions authorized by Supreme Court Rule or Commission Rule, make and enforce all rules and orders necessary to compel compliance with this rule.

M.R. 16530

BEFORE THE SUPREME COURT OF ILLINOIS

In re the Matter of:)
KENNETH ALAN KOZEL,) Commission No. 96CH50
Respondent-Appellant,) Filed: July 11, 2000
No. 1519727)

MOTION FOR RECONSIDERATION OF ORDER

Now comes the respondent by counsel and for his Motion for Reconsideration of Order, states as follows:

On June 30, 2000, this court entered an order allowing the petitions for leave to file exceptions of both parties, the Administrator and the respondent, and disbarred the respondent. This court's order was not accompanied by an opinion and did not provide any reasons for the disbarment. See Appendix, page 9.

The Review Board had previously recommended a suspension and had filed a unanimous 20-page supporting opinion with reasons supporting the suspension. See Appendix, pages 10-30. The Illinois Supreme Court did not provide any reasons as to why the decision of the Review Board should not be accepted, or why the respondent should be disbarred.

A respondent in an attorney discipline case has the right to seek further review in the United States Supreme Court of an order entered by the Illinois Supreme Court. See Appendix, page 31. The punishment of disbarment of an attorney means, for all practical purposes, the destruction of his professional life. In Re Harris, 93 Ill.2d 285, 1982; In Re Donaghy, 402 Ill. 120 2d (1948).

In the Federal Courts, Federal Rule of Civil Procedure 52 and Bankruptcy Rule 7052 mandate that it is a court's duty to make findings of fact and

conclusions of law. See Appendix, pages 76-77. The purpose is to provide a court of review and the litigants with a clear understanding of the underlying judgment, and to avoid prejudice to the litigants. A court of review is entitled to a clear basis for the decision of the underlying court. Brown v. Quinlan, Inc., 138 F2d 228 (7th Cir. 1943); Feeley v.U.S., 337 F2d 924 (3d Cir. 1964); Leighton v. One William Street Fund, Inc., 343 F2d 565 (2d Cir. 1965); In Re Metropolitan Realty Corp., 433 F. 2d 676 (5th Cir. 1970), cert. Denied 401 US 1008.

Correspondingly, since this court's order of June 30, 2000, is reviewable by the U.S. Supreme Court, this court has a duty to issue an opinion and provide reasons for the disbarment of the respondent. This court has an obligation to provide reasons so that the U.S. Supreme Court will have a clear understanding of its order, especially here where this court it has granted both parties leave to file exceptions and overturned the 20-page opinion of the Review Board.

The perfunctory order of disbarment entered by this court has denied the respondent due process of law under the 14th Amendment of the United States Constitution because this court has failed to issue an opinion, failed to provide any reasons for disbarment, failed to provide any reasons why the unanimous opinion of the Review Board should not be accepted, and denied the respondent review before the U.S. Supreme Court. See Appendix, page 32.

The Illinois Supreme Court has issued a great number of opinions in disbarment cases through the years in which the court has provided reasons for the disbarment of an attorney. See Appendix, pages 33-37. The Illinois Supreme Court has denied the respondent

the equal protection of the law under the 14th Amendment of the United States Constitution by issuing an opinion in all these other disbarment cases and providing reasons for disbarment, but not issuing an opinion in this case and not providing any reasons for the disbarment of the respondent. See Appendix, 32.

Supreme Court Rule 753(e)(5)(i) provides that the Illinois Supreme Court can enter a final order as recommended by the Review Board or as otherwise determined by the court. See Appendix, page 38-42. The words, "as otherwise determined by the court", are unconstitutional as applied in this case in the order of June 30, 2000, because they have denied the respondent an opinion and reasons for disbarment, denied the respondent reasons why the decision of the Review Board has been overturned, and denied the respondent review before the U.S. Supreme Court. By applying Rule 753 in this fashion, this court has denied the respondent due process and the equal protection of the law under the 14th Amendment of the U.S. Constitution. See Apendix, page 32.

Attorney Registration and Disciplinary Commission Rule 311 mandates that the Review Board address the issues raised by the parties. See Appendix, page 43. The Review Board had this case under review for 24 months before issuing its unanimous opinion, 9 months prior to oral argument and 15 months after oral argument. The members of the Review Board addressed the issues and gave this case many, many hours of detailed attention at considerable personal sacrifice. For this court to fail to address the issues and not provide reasons why the decision of the Review

Board should be overturned, shows a lack of due deference for the Review Board.

The respondent requested an extension of time to file his petition for leave to file exceptions. See Appendix, page 44-46. The respondent's request for an extension of time was denied by this court, and the respondent was limited to 21 days to submit his petition for leave to file exceptions. See Appendix, page 47. The Administrator also requested an extension of time to file the Administrator's answer to the respondent's petition for leave to file exceptions. See Appendix, page 48-50. This court allowed the Administrator's request for extension of time over the respondent's objection. See Appendix, pages 51, 74-75. This court denied the respondent due process of law and the equal protection of the law under the 14th Amendment of the U.S. Constitution when it denied the petitioner an extension of time but allowed the Administrator an extension of time.

The respondent filed three motions requesting leave to supplement his petition for leave to file exceptions with relevant matters that had arisen subsequent to the filing of the respondent's petition for leave to file exceptions. See Appendix, pages 52-66. This court denied the respondent due process of law and the equal protection of the law under the 14th Amendment of the U.S. Constitution when it issued three orders that denied the petitioner leave to supplement his petition for leave to file exceptions with the above matters. See Appendix, pages 67-69.

An attorney is the only profession in Illinois that is denied judicial review as a matter of right in a proceeding involving the loss of a professional license. All other professions in Illinois are allowed judicial

review as a matter of right in the Circuit Court and in the Appellate Court. See Appendix, page 70.

The respondent has been denied judicial review as a result of the application of Supreme Court Rules 751 and 753. Judicial review as a matter of right is not provided for attorneys as it is for all other professions in Illinois. Furthermore, the Illinois Supreme Court has denied the respondent judicial review by failing to issue an opinion and provide reasons for disbarment in its order of June 30, 2000. Though its rules, this court has denied the respondent judicial review in a disbarment proceeding, and denied the respondent due process and equal protection of the law under the 14th Amendment of the U.S. Constitution.

The members of the Hearing Board on this case were appointed by the Attorney Registration and Disciplinary Commission and selected by the Administrator pursuant to Supreme Court Rule 753(c)(1). See Appendix, pages 38-42. On the other hand, the members of the Review Board on this case were appointed by the Illinois Supreme Court pursuant to Supreme Court Rule 753(d)(1). See Appendix, pages 38-42.

The members of the Hearing Board are non-judicial officers in that they were not appointed by any court. The net result is that this court has summarily and without explanation adopted the recommendation of non-judicial officers of the Hearing Board that the respondent be disbarred. Supreme Court Rule 753(c)(1), which provides for the appointment of non-judicial officers to the Hearing Board and the adoption of their recommendation for disbarment by this court, is unconstitutional. Furthermore, the respondent was denied judicial review because the members of the

Hearing Board are non-judicial officers. The respondent has been denied judicial review in comparison to all other professions in Illinois. The respondent has been denied due process and equal protection under the 14th Amendment of the U.S. Constitution. See Appendix 32.

There is an issue as to whether the judicial districts of this court are in compliance with the federal requirement of one-man, one-vote. According to the 1990 census, the Third Supreme Court District in which the respondent resides, is 8.5% below equality, the Fourth District is 21.9% below equality and the Fifth District is 19.3% below equality. The Second District has nearly 50% more residents than it would have if all four downstate districts were equal. See Appendix, 71-73. As a result, the respondent has been denied due process and the equal protection of the law under the 14th Amendment of the U.S. Constitution since the districts are not in compliance with the one-man, one-vote requirement.

WHEREFORE, the respondent prays that this court reconsider and vacate the order entered on June 30, 2000, and further order that this case be accepted for further consideration, that each party be allowed to file briefs, that oral argument be allowed and that this case be decided by a full opinion.

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Attorney at Law
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(815) 220-1082

Respectfully submitted,
s/Peter H. Rodenburg
Counsel for the Respondent

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M.R. 16530

BEFORE THE SUPREME COURT OF ILLINOIS

In re the Matter of:)
KENNETH ALAN KOZEL,)Commission No. 96 CH 50
Respondent-Appellant,) Filed: July 20, 2000
No. 1519727)

MOTION FOR LEAVE TO FILE AMENDMENT TO MOTION FOR RECONSIDERATION OF ORDER

Now comes the respondent by counsel and for his Motion for Leave to file Amendment to Motion for Reconsideration of Order, states as follows:

In his Motion for Reconsideration of Order, the respondent previously stated that Supreme Court Rule 753(e)(5)(a)(i), and in particular the phrase, "enter a final order ... as otherwise determined by the court," was unconstitutional, because the above phrase, as applied, along with this court's order of June 30, 2000, denied the respondent an opinion and reasons for disbarment in this case. See Appendix, pages 4 and 6-8).

The respondent suffered an additional constitutional denial as a result of the application of Supreme Court Rule 753(e)(5)(a)(i) and (a)(iii). In any case other than an attorney discipline case, when a petition for leave to appeal is allowed by the Illinois Supreme Court, the petitioner, as a matter of right pursuant to Supreme Court Rule 315(g), is given the option (1) of allowing his petition for leave to appeal to stand as his appellant's brief or (2) of filing a brief in lieu of his petition for leave to appeal or as a supplement, before the court decides the merits of the case and issues an opinion. See Appendix, page 9.

In contrast, when a petition for leave to file exceptions in an attorney discipline case is allowed, as

it was in this case, Supreme Court Rule 753(e)(5)(a)(iii) provides that the attorney's petition for leave to file exceptions "shall stand as the brief of the appellant." See Appendix, pages 4 and 6-8.

Supreme Court Rule 753(e)(5)(a)(i) and (a)(iii) denied the respondent attorney the second option allowed all others (non-attorneys) as a matter of right, of filing a brief in lieu of his petition for leave to file exceptions or as a supplement, before the Illinois Supreme Court entered the order of June 30, 2000. This constituted a denial of due process and the equal protection of the law under the 14th Amendment of the U.S. Constitution. See Appendix, page 5.

The substance of the above additional ground for the Motion for Reconsideration of Order is set forth in the attached Amendment to Motion for Reconsideration of Order, and was not recognized at the time the Motion for Reconsideration of Order was filed because the constitutional deprivation was not readily apparent. In addition, this appears to be a matter of first impression.

The rehearing time period of 21 days pursuant to Supreme Court Rule 367 from the issuance of this court's order on June 30, 2000, has not yet expired.

A copy of the Amendment to Motion for Reconsideration of Order is attached hereto and incorporated herein.

WHEREFORE, the respondent prays that this court allow leave to file the attached Amendment to Motion for Reconsideration of Order, that this court reconsider and vacate the order entered on June 30, 2000, and further order that this case be accepted for further consideration, that each party be allowed to file

briefs, that oral argument be allowed and that this case be decided by a full opinion.

Respectfully submitted,
s/Peter H. Rodenburg
Counsel for Respondent

VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

s/ Peter H. Rodenburg

Peter H. Rodenburg
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505 First Street
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(815) 220-1082

M.R. 16530

BEFORE THE SUPREME COURT OF ILLINOIS

In re the Matter of:)
KENNETH ALAN KOZEL,) Commission No. 96 CH 50
Respondent-Appellant,) Filed: July 20, 2000
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Now comes the respondent by counsel and for his Amendment to Motion for Reconsideration of Order, states as follows:

In his Motion for Reconsideration of Order, the respondent previously stated that Supreme Court Rule 753(e)(5)(a)(i), and in particular the phrase, "enter a final order ... as otherwise determined by the court," was unconstitutional, because the above phrase, as applied, along with this court's order of June 30, 2000, denied the respondent an opinion and reasons for disbarment in this case. See Appendix, pages 4 and 6-8).

The respondent suffered an additional constitutional denial as a result of the application of Supreme Court Rule 753(e)(5)(a)(i) and (a)(iii). In any case other than an attorney discipline case, when a petition for leave to appeal is allowed by the Illinois Supreme Court, the petitioner, as a matter of right pursuant to Supreme Court Rule 315(g), is given the option (1) of allowing his petition for leave to appeal to stand as his appellant's brief or (2) of filing a brief in lieu of his petition for leave to appeal or as a supplement, before the court decides the merits of the case and issues an opinion. See Appendix, page 9.

In contrast, when a petition for leave to file exceptions in an attorney discipline case is allowed, as

it was in this case, Supreme Court Rule 753(e)(5)(a)(iii) provides that the attorney's petition for leave to file exceptions "shall stand as the brief of the appellant." See Appendix, pages 4 and 6-8.

Supreme Court Rule 753(e)(5)(a)(i) and (a)(iii) denied the respondent attorney the second option allowed all others (non-attorneys) as a matter of right, of filing a brief in lieu of his petition for leave to file exceptions or as a supplement, before the Illinois Supreme Court entered the order of June 30, 2000. This constituted a denial of due process and the equal protection of the law under the 14th Amendment of the U.S. Constitution. See Appendix, page 5.

WHEREFORE, the respondent prays that this court reconsider and vacate the order entered on June 30, 2000, and further order that this case be accepted for further consideration, that each party be allowed to file briefs, that oral argument be allowed and that this case be decided by a full opinion.

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Respectfully submitted,
s/Peter H. Rodenburg
Counsel for Respondent

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Excerpts from Kenneth Kozel's Petition for Leave to File Exceptions filed with the Illinois Supreme Court.

1. The statements the respondent is alleged to have made involving the judiciary in violation of Rule 8.2(a), are either statements that are not false, or are statements of opinion that can neither be proved true or false. All of the statements are protected by the First Amendment. The Administrator called the respondent as an adverse witness before the Hearing Board, but did not ask him about any of the alleged statements. The Administrator had the burden of proof by clear and convincing evidence, but did not prove the elements in Rule 8.2(a) of knowledge of falsity or reckless disregard, and that any alleged statement was false, as evidenced by the lack of factual findings of falsity in the report of the Hearing Board. The burden of proof was improperly shifted to the respondent to prove that the statements were true.

2. The Illinois Supreme Court has recognized a First Amendment privilege for an attorney's statements involving the judiciary in Owen v. Carr. The Palmisano case can be distinguished from the respondent's case, because it involved allegations of dishonesty. The respondent did not make any allegations of dishonesty, and was not charged with making any allegations of dishonesty. The Ninth Circuit Court of Appeals has recognized a First Amendment privilege for an attorney's statements about the judiciary, even involving allegations of dishonesty, in Standing Committee on Discipline v. Yagman. The law in regard to the First Amendment protection afforded an attorney's statements about the judiciary is unsettled, as evidenced by the Palmisano

and Yagman cases, the statements of Justice Heiple, and the dissent of Justice Harrison and the specially concurring opinion of Justice Miller in the People v. Bull case. 7

3. The ARDC selectively prosecuted the respondent under Rule 8.2(a) in regard to the alleged statements regarding judges. The statements attributed to the respondent were not publicized in the press. Many other attorneys have used the press to make statements about judges, and have used extremely harsh and offensive language. The ARDC has not filed a complaint against any of these attorneys. There is a constitutional right to be free from selective prosecution on the basis of speech. 12

4. ...

5. Rule 8.2(a) is void for vagueness and overbroad as interpreted. 18

6-9 ...

10. The recommendation of the Review Board for a three-year suspension is excessive, disproportionate and arbitrary, and should be reversed. The respondent received a three-year suspension, the same discipline that was recently given to Roberto Cisneros, Jr., who was convicted of three felony counts of aggravated sexual abuse on a fifteen-year-old girl. In re Cisneros, M.R. 15558 (1999). The respondent's case is distinguishable from all the cases cited by the Review Board. 27

11-18.

19. The Supreme Court revised Supreme Court Rule 753, effective November 1, 1990, and eliminated judicial review as a matter of right by the Supreme Court in attorney disciplinary cases. As a result, the respondent has been unconstitutionally denied judicial

review as a matter of right. An attorney is the only profession in Illinois that is denied judicial review as a matter of right. All other professions in Illinois are allowed judicial review as a matter of right in the Circuit Court and in the Appellate Court. 63

Excerpt from Kenneth Kozel's Answer to the Administrator's Petition for Leave to File Exceptions filed with the Illinois Supreme Court.

19. Waiting until the Hearing Board Report is issued to accuse a respondent in a conclusory fashion of filing frivolous objections and motions, and then enhancing discipline, denies a respondent due process and equal protection of the law. Any alleged frivolous objection or motion filed during prehearing should be dealt with at that time so that a respondent can make a proper response before the Hearing Board.

The Hearing Board waited until it issued its report in this case to accuse the respondent of filing objections and motions without any basis in law or fact during prehearing proceedings, not cooperating and being an obstructionist. The Hearing Board then considered its findings in aggravation against the respondent. The Review Board also failed to point to anything specific, and improperly concluded that the Hearing Board was correct.

Any objection deemed to be unfounded or technical during prehearing proceedings in an attorney discipline case, should be dealt with at that time so that a respondent can make a proper response. Waiting until the hearing board report is issued to accuse an attorney of filing unfounded objections and motions,

and then enhancing the discipline as a result, is completely unfair. It's too late for a respondent to respond to such accusations after the hearing board report has been issued. Limiting a respondent's response to filing an exception before the Review Board is also inadequate and a denial of due process and equal protection.

An attorney discipline case is no different than an ordinary case. If a party, or a chairman of a hearing panel for that matter, thinks a violation of Supreme Court Rule 137 has occurred during prehearing proceedings, a respondent should be given a fair opportunity to respond at that time, not after the fact before the Review Board. If the Chairman still believes a violation of Rule 137 has occurred after the respondent has been given a fair opportunity to respond, then a separate sanction (monetary or otherwise), should be imposed at that time before the hearing board report is issued, rather than enhancing the discipline later in the hearing board report without notice to the respondent. This will guarantee a respondent due process and equal protection of the law, and a proper review of any sanction imposed.

In re INGERSOLL, Docket No. 85127, SUPREME COURT OF ILLINOIS, 186 Ill. 2d 163; 710 N.E.2d 390; 1999 Ill. LEXIS 26; 237 Ill. Dec. 760, March 18, 1999.

In re ROTMAN, No. 68433, Supreme Court of Illinois, 136 Ill. 2d 401; 556 N.E.2d 243; 1990 Ill. LEXIS 70; 144 Ill. Dec. 776, May 30, 1990.

In re LEWIS, No. 69542, Supreme Court of Illinois, 138 Ill. 2d 310; 562N.E.2d 198; 1990 Ill. LEXIS 111; 149 Ill. Dec. 734, October 4, 1990.

In re BELL, No. 71175, Supreme Court of Illinois, 147 Ill. 2d 15; 588 N.E.2d 1093; 1992 Ill. LEXIS 7; 167 Ill. Dec. 963, January 23, 1992, Rehearing Denied March 30, 1992.

In re VAVRIK, No. 63902, Supreme Court of Illinois, 117 Ill. 2d 408; 512 N.E.2d 1226; 1987 Ill. LEXIS 213; 111 Ill. Dec. 589, Rehearing Denied October 5, 1987.

In re BRANER, No. 63283, Supreme Court of Illinois, 115 Ill. 2d 384; 504 N.E.2d 102; 1987 Ill. LEXIS 152; 105 Ill. Dec. 233, January 30, 1987.

In re BLANK, No. 71189, Supreme Court of Illinois, 145 Ill. 2d 534; 585 N.E.2d 105; 1991 Ill. LEXIS 119; 165 Ill. Dec. 709, November 27, 1991, Rehearing Denied February 3, 1992.

In re BEHNKE, No. 67037, Supreme Court of Illinois, 127 Ill. 2d 322; 537 N.E.2d 326; 1989 Ill. LEXIS 27; 130 Ill. Dec. 259, March 22, 1989.

In re POWELL, No. 65387, Supreme Court of Illinois, 126 Ill. 2d 15; 533 N.E.2d 831; 1988 Ill. LEXIS 175; 127 Ill. Dec. 749, December 15, 1988, Rehearing Denied January 30, 1989.

In re D'ANGELO, No. 66514, Supreme Court of Illinois, 126 Ill. 2d 45; 533 N.E.2d 861; 1988 Ill. LEXIS 184; 127 Ill. Dec. 779, December 15, 1988, Rehearing Denied January 30, 1989.

In re HELLER, No. 66768, Supreme Court of Illinois, 126 Ill. 2d 94; 533 N.E.2d 824; 1988 Ill. LEXIS 161; 127 Ill. Dec. 742, December 6, 1988, Rehearing Denied January 30, 1989.

In re GREEN, Docket No. 65942, Supreme Court of Illinois, 1988 Ill. LEXIS 142, October 20, 1988.

In re LEVIN, No. 64151, Supreme Court of Illinois, 118 Ill. 2d 77; 514 N.E.2d 174; 1987 Ill. LEXIS 225; 112 Ill. Dec. 708, September 21, 1987

In re JORDAN, No. 60244, Supreme Court of Illinois, 106 Ill. 2d 162; 478 N.E.2d 316; 1985 Ill. LEXIS 211; 88 Ill. Dec. 1, March 22, 1985, Rehearing Denied May 31, 1985.

In re TEICHNER, No. 59268, Supreme Court of Illinois, 104 Ill. 2d 150; 470 N.E.2d 972; 1984 Ill. LEXIS 370; 83 Ill. Dec. 552, September 20, 1984, Rehearing Denied November 30, 1984.

In re WOLDMAN, No. 57376, Supreme Court of Illinois, 98 Ill. 2d 248; 456 N.E.2d 35; 1983 Ill. LEXIS 471; 74 Ill. Dec. 533, October 4, 1983, Rehearing Denied December 2, 1983.

In re SCHNEIDER, No. 57167, Supreme Court of Illinois, 98 Ill. 2d 215; 456 N.E.2d 2; 1983 Ill. LEXIS 468; 74 Ill. Dec. 500, September 23, 1983, Rehearing Denied December 2, 1983.

In re SYED MOHAMMED JAWAID IQBAL JAFREE, No. 56759, Supreme Court of Illinois, 93 Ill. 2d 450; 444 N.E.2d 143; 1982 Ill. LEXIS 399; 67 Ill. Dec.

104, December 17, 1982, Rehearing Denied January 28, 1983.

In re WESTON, No. 55675, Supreme Court of Illinois, 92 Ill. 2d 431; 442 N.E.2d 236; 1982 Ill. LEXIS 348; 65 Ill. Dec. 925, October 22, 1982, Rehearing Denied November 24, 1982.

In re PAPPAS, No. 55382, Supreme Court of Illinois, 92 Ill. 2d 243; 442 N.E.2d 142; 1982 Ill. LEXIS 330; 65 Ill. Dec. 831, September 17, 1982, Rehearing Denied November 24, 1982.

In re FELDMAN, No. 55231, Supreme Court of Illinois, 89 Ill. 2d 7; 431 N.E.2d 388; 1982 Ill. LEXIS 213; 59 Ill. Dec. 103, January 21, 1982.

In re PATT, No. 52973, Supreme Court of Illinois, 81 Ill. 2d 447; 410 N.E.2d 870; 1980 Ill. LEXIS 377; 43 Ill. Dec. 737, September 15, 1980,

In re SMITH, No. 50871, Supreme Court of Illinois, 75 Ill. 2d 134; 387 N.E.2d 316; 1979 Ill. LEXIS 263; 25 Ill. Dec. 660, January 26, 1979, Rehearing Denied March 30, 1979.

In re MITAN, No. 50594, Supreme Court of Illinois, 75 Ill. 2d 118; 387 N.E.2d 278; 1979 Ill. LEXIS 261; 25 Ill. Dec. 622, January 12, 1979, Rehearing Denied March 30, 1979.

In re ROSENTHAL, No. 50098, Supreme Court of Illinois, 73 Ill. 2d 46; 382 N.E.2d 257; 1978 Ill. LEXIS 345; 21 Ill. Dec. 893, October 6, 1978, Rehearing Denied December 1, 1978.

In re STILLO, No. 49023, Supreme Court of Illinois, 68 Ill. 2d 49; 368 N.E.2d 897; 1977 Ill. LEXIS 357; 11 Ill. Dec. 289, October 5, 1977,

In re FREY, No. 48592, Supreme Court of Illinois, 65 Ill. 2d 130; 357 N.E.2d 511; 1976 Ill. LEXIS 414; 2 Ill. Dec. 344, November 15, 1976

In re SMITH, No. 48038, Supreme Court of Illinois, 63 Ill. 2d 250; 347 N.E.2d 133; 1976 Ill. LEXIS 309, March 29, 1976, Rehearing Denied May 27, 1976.

In re HUTUL, No. 43292, Supreme Court of Illinois, 54 Ill. 2d 209; 296 N.E.2d 332; 1973 Ill. LEXIS 328, March 20, 1973, Rehearing Denied June 1, 1973.

In re SNITOFF, No. 43848, Supreme Court of Illinois, 53 Ill. 2d 50; 289 N.E.2d 428; 1972 Ill. LEXIS 260, September 20, 1972, Rehearing Denied November 29, 1972.

In re FUMO, No. 43554, Supreme Court of Illinois, 52 Ill. 2d 307; 288 N.E.2d 9; 1972 Ill. LEXIS 345, September 20, 1972

In re SCHWARZ, No. 43796, Supreme Court of Illinois, 51 Ill. 2d 334; 282 N.E.2d 689; 1972 Ill. LEXIS 434, March 21, 1972, Rehearing Denied May 25, 1972.

In re SARELAS, No. 43138, Supreme Court of Illinois, 50 Ill. 2d 87; 277 N.E.2d 313; 1971 Ill. LEXIS 253, November 30, 1971

In re NESSELSON, No. 41144, Supreme Court of Illinois, 43 Ill. 2d 262; 253 N.E.2d 455; 1969 Ill. LEXIS 277, November 26, 1969

In re BROVERMAN, No. 41074, Supreme Court of Illinois, 40 Ill. 2d 302; 239 N.E.2d 816; 1968 Ill. LEXIS 378, May 29, 1968, Rehearing Denied September 24, 1968.

In re THOMPSON, No. 37600, Supreme Court of Illinois, 30 Ill. 2d 560; 198 N.E.2d 337; 1963 Ill. LEXIS 369, November 26, 1963, Rehearing Denied May 19, 1964.

In re LINGLE, No. 37358, Supreme Court of Illinois, 27 Ill. 2d 459; 189 N.E.2d 342; 1963 Ill. LEXIS 666, March 27, 1963

In re STOWE, No. 37249, Supreme Court of Illinois, 27 Ill. 2d 47; 188 N.E.2d 32; 1963 Ill. LEXIS 588, February 1, 1963

In re AHERN, No. 37054, Supreme Court of Illinois, 26 Ill. 2d 104; 185 N.E.2d 869; 1962 Ill. LEXIS 352, September 28, 1962, Rehearing Denied November 29, 1962.

In re BURNS, No. 36667, Supreme Court of Illinois, 25 Ill. 2d 56; 182 N.E.2d 740; 1962 Ill. LEXIS 440, May 25, 1962

In re EATON, No. 34436, Supreme Court of Illinois, 14 Ill. 2d 338; 152 N.E.2d 850; 1958 Ill. LEXIS 342, September 18, 1958

In re ASHBACH, No. 34442, Supreme Court of Illinois, 13 Ill. 2d 411; 150 N.E.2d 119; 1958 Ill. LEXIS 280, March 20, 1958

In re CLARK, No. 33603, Supreme Court of Illinois, 8 Ill. 2d 314; 134 N.E.2d 281; 1956 Ill. LEXIS 260, March 22, 1956, Rehearing Denied May 22, 1956.

In re THOMSON, No. 32947, Supreme Court of Illinois, 3 Ill. 2d 308; 121 N.E.2d 490; 1954 Ill. LEXIS 413, May 24, 1954, Rehearing Denied September 20, 1954.

In re Rosenberg, No. 32288, Supreme Court of Illinois, 413 Ill. 567; 110 N.E.2d 186; 1953 Ill. LEXIS 234, January 22, 1953

In re Yablunky, No. 31256, Supreme Court of Illinois, 407 Ill. 111; 94 N.E.2d 841; 1950 Ill. LEXIS 422, September 21, 1950, Rehearing Denied November 17, 1950.

In re Koptik, No. 31309, Supreme Court of Illinois, 406 Ill. 141; 92 N.E.2d 462; 1950 Ill. LEXIS 351, May 18, 1950

In re O'Malley, No. 31131, Supreme Court of Illinois, 404 Ill. 257; 88 N.E.2d 881; 1949 Ill. LEXIS 390, November 22, 1949

In re Rieger, No. 30879, Supreme Court of Illinois, 402 Ill. 483; 84 N.E.2d 439; 1949 Ill. LEXIS 261, January 19, 1949, Rehearing Denied March 16, 1949

In re Roth, No. 29793, Supreme Court of Illinois, 398 Ill. 131; 75 N.E.2d 278; 1947 Ill. LEXIS 466, September 18, 1947, Rehearing Denied November 17, 1947.

In re Pontarelli, No. 29271, Supreme Court of Illinois, 393 Ill. 310; 66 N.E.2d 83; 1946 Ill. LEXIS 310, March 20, 1946

In re McCallum, No. 27978, Supreme Court of Illinois, 391 Ill. 400; 64 N.E.2d 310; 1945 Ill. LEXIS 376, March 21, 1945, Rehearing Denied May 21, 1945. Additional Opinion Reported at 391 Ill. 400 at 417.

In re NELSON, No. 27277., Supreme Court of Illinois, 385 Ill. 30; 52 N.E.2d 189; 1943 Ill. LEXIS 763, November 16, 1943, Rehearing denied January 13, 1944.

In re MELNICK, No. 27034., Supreme Court of Illinois, 383 Ill. 200; 48 N.E.2d 935; 1943 Ill. LEXIS 547, May 20, 1943.

In re HARRIS, No. 26833., Supreme Court of Illinois, 383 Ill. 336; 50 N.E.2d 441; 1943 Ill. LEXIS 566, May 20, 1943, Rehearing denied September 15, 1943.

In re GOODMAN, No. 26164., Supreme Court of Illinois, 377 Ill. 578; 37 N.E.2d 345; 1941 Ill. LEXIS 685, September 15, 1941, Rehearing denied November 18, 1941.

In re CARR, No. 26017., Supreme Court of Illinois, 377 Ill. 140; 36 N.E.2d 243; 1941 Ill. LEXIS 622, June 13, 1941.

In re GOODMAN, No. 26048., Supreme Court of Illinois, 377 Ill. 178; 36 N.E.2d 259; 1941 Ill. LEXIS 628, June 13, 1941, Rehearing denied September 1941.

In re BOTH, No. 25905., Supreme Court of Illinois, 376 Ill. 177; 33 N.E.2d 213; 1941 Ill. LEXIS 715, February 14, 1941, Rehearing denied April 8, 1941.

In re LENOX, No. 24971., Supreme Court of Illinois, 371 Ill. 505; 21 N.E.2d 721; 1939 Ill. LEXIS 638, June 15, 1939.

In re PISZATOWSKI, No. 24794, Supreme Court of Illinois, 370 Ill. 375; 19 N.E.2d 169; 1938 Ill. LEXIS 528, December 15, 1938, Rehearing denied February 15, 1939.

In re PATLAK, No. 22299., Supreme Court of Illinois, 368 Ill. 547; 15 N.E.2d 309; 1938 Ill. LEXIS 697; 116 A.L.R. 627, April 15, 1938, Rehearing denied June 8, 1938.

In re DOSS, No. 23850., Supreme Court of Illinois, 367 Ill. 570; 12 N.E.2d 659; 1937 Ill. LEXIS 537, December 15, 1937, Rehearing denied February 2, 1938.

PEOPLE ex rel. McLean Cty. Bar Assn. v. JISKRA, No. 22423., Supreme Court of Illinois, 366 Ill. 446; 9 N.E.2d 193; 1937 Ill. LEXIS 603, June 11, 1937.

In re KETTLES, No. 23649., Supreme Court of Illinois, 365 Ill. 168; 6 N.E.2d 146; 1936 Ill. LEXIS 573, December 10, 1936, Rehearing denied February 3, 1937.

In re NEEDHAM, No. 23525., Supreme Court of Illinois, 364 Ill. 65; 4 N.E.2d 19; 1936 Ill. LEXIS 603, June 17, 1936, Rehearing denied October 7, 1936.

In re MALMIN, No. 23153., Supreme Court of Illinois, 364 Ill. 164; 4 N.E.2d 111; 1936 Ill. LEXIS 615, June 10, 1936, Rehearing denied October 13, 1936.

PEOPLE ex rel. Chicago Bar Assn. v. TEMPLEMAN, No. 21866., Supreme Court of Illinois, 363 Ill. 152; 1 N.E.2d 850; 1936 Ill. LEXIS 714, April 17, 1936.

In re MACK, No. 22610., Supreme Court of Illinois, 360 Ill. 343; 196 N.E. 197; 1935 Ill. LEXIS 721, April 12, 1935, Rehearing denied June 5, 1935.

In re CASEY, No. 22288., Supreme Court of Illinois, 359 Ill. 496; 195 N.E. 39; 1934 Ill. LEXIS 965, December 17, 1934, Rehearing denied February 21, 1935.

PEOPLE ex rel. Chicago Bar Assn. v. PACE, No. 20355., Supreme Court of Illinois, 354 Ill. 111; 188 N.E. 169; 1933 Ill. LEXIS 803, October 21, 1933, Rehearing denied December 14, 1933.

In re INFORMATION TO DISCIPLINE CERTAIN ATTYS. OF THE SANITARY DIST. OF CHICAGO, No. 20357., Supreme Court of Illinois, 351 Ill. 206; 184 N.E. 332; 1932 Ill. LEXIS 669, December 23, 1932, Rehearing denied February 23, 1933.

PEOPLE ex rel. Chicago Bar Assn. v. HACHTMAN, No. 20554., Supreme Court of Illinois, 350 Ill. 326; 183 N.E. 222; 1932 Ill. LEXIS 922, October 22, 1932, Rehearing denied December 7, 1932.

PEOPLE ex rel. Chicago Bar Assn. v. LADOUCEUR, No. 20138., Supreme Court of

Illinois, 347 Ill. 454; 179 N.E. 890; 1932 Ill. LEXIS 706, February 19, 1932.

PEOPLE ex rel. Chicago Bar Assn. v. GORMAN, No. 20235., Supreme Court of Illinois, 346 Ill. 432; 178 N.E. 880; 1931 Ill. LEXIS 1000, December 17, 1931.

PEOPLE ex rel. Chicago Bar Assn. v. GILMORE, No. 19944., Supreme Court of Illinois, 345 Ill. 28; 177 N.E. 710; 1931 Ill. LEXIS 854, June 18, 1931, Rehearing denied October 7, 1931.

PEOPLE ex rel. Chicago Bar Assn. v. BRIGGS, No. 18585., Supreme Court of Illinois, 330 Ill. 339; 161 N.E. 736; 1928 Ill. LEXIS 930, April 21, 1928, Rehearing denied June 13, 1928.

PEOPLE ex rel. Chicago Bar Assn. v. JACKSON, No. 17257., Supreme Court of Illinois, 322 Ill. 618; 153 N.E. 621; 1926 Ill. LEXIS 1175, October 28, 1926.

PEOPLE ex rel. Chicago Bar Assn. v. OLSON, No. 16548., Supreme Court of Illinois, 322 Ill. 210; 153 N.E. 348; 1926 Ill. LEXIS 1113, June 16, 1926, Rehearing denied October 6, 1926.

Professions in Illinois Entitled to Judicial Review in the Circuit Court and Appellate Court of Illinois as a Matter of Right

Architects 225 ILCS 305/34, Athletic Trainers 225 ILCS 5/29, Audiologists 225 ILCS 50/31, Barbers 225 ILCS 410/4-21, Boxers, Promoters, Referees, Judges, Managers, Trainers and Timekeepers 225 ILCS 105/17, Certified Shorthand Reporters 225 ILCS 415/23.14, Child Care Facility Operators 225 ILCS 10/17, Chiropractors 225 ILCS 60/41, Clinical Psychologists 225 ILCS 15/22, Collection Agents 225 ILCS 425/9.22, Cosmetologists 225 ILCS 410/4-21, Dentists 225 ILCS 25/32, Detection of Deception Examiners 225 ILCS 430/20, Detectives 225 ILCS 446/165, Dieticians 225 ILCS 30/160, Estheticians 225 ILCS 410/4-21, Explosives 225 ILCS 210/5008, Farm Labor Contractors 225 ILCS 505/12, Feeder Swine Dealers 225 ILCS 620/17.15, Fire Equipment Distributors 225 ILCS 215/21, Fresh Fruit & Vegetable Merchants 225 ILCS 625/13.01, Funeral Directors and Embalmers 225 ILCS 41/15-35, Grain Dealers 225 ILCS 630/6, Hazardous Waste Equipment Operators & Laborers 225 ILCS 220/13, Horsemeat Slaughterers 225 ILCS 635/17, Interior Designers 225 ILCS 310/21, Landscape Architects 225 ILCS 315/29, Land Surveyors 225 ILCS 330/41, Livestock Buyers & Processors 225 ILCS 655/12, Livestock Dealers 225 ILCS 645/13, Marriage and Family Therapists 225 ILCS 55/150, Meat and Poultry Inspectors 225 ILCS 650/17, Nail Technicians 225 ILCS 410/4-21, Nurses 225 ILCS 65/44, Nursing Home Administrators 225 ILCS 70-35, Occupational Therapists 225 ILCS 75/19.14, Optometrists 225 ILCS 80/26.14, Pet Shop Operators

225 ILCS 605/15, Pharmacists 225 ILCS 85/35.17, Physicians 225 ILCS 60/41, Physician's Assistants 225 ILCS 95/22.14, Plumbers 225 ILCS 320/28, Podiatrists 225 ILCS 100/39[1], Private Employment Agency Employees 225 ILCS 515/12, Private Sewage Disposal Contractors 225 ILCS 225/21, Professional Engineers 225 ILCS 325/37, Public Accountants 225 ILCS 450/21, Real Estate Brokers and Salespersons 225 ILCS 455/12, Roofers 225 ILCS 335/9.7, Social Workers 225 ILCS 20/33, Solid Waste Site Operators 225 ILCS 230/1012, Speech Language Pathologists 225 ILCS 110/24, Structural Engineers 225 ILCS 340/32, Veterinarians 225 ILCS 115/25.14e, Water Well and Pump Installation Contrators 225 ILCS 345/21, Wrestlers, Promoters, Referees, Judges, Managers, Trainers and Timekeepers 225 ILCS 105/17.

Supreme Court districts violate state constitution
Heiple's district among four with large population disparities

CHICAGO (AP) Despite, constitutional requirements, the Legislature has shown little interest for 30 years in balancing the four Illinois Supreme Court districts outside Cook County, a newspaper reported Thursday.

The issue could come up as soon as this spring, possibly in the form of a state constitutional amendment to realign the districts, House Speaker Lee Daniels said Thursday.

Daniels, R-Elmhurst, said populations in those four districts are out of balance. "We need to do something about it. But, you know, we don't want to rush in to this. We want to very carefully weigh (the) approach to it."

While the Illinois Constitution requires the four districts; to have "substantially equal" populations, there's, been a growing disparity since the requirement was established in 1964, the Chicago Sun-Times found.

However, even if the Justices from the four districts were improperly elected because of the population imbalance, legal experts said it's not likely any of the court's rulings are in jeopardy. "Courts are very reluctant to retroactively overturn cases for those reasons," said Jeffrey M. Shaman, a professor of law and constitutional scholar at DePaul University.

Three justices are elected from the 1st District, which covers Cook County, and one each from the other four. The 1st District is not required by the

constitution to have its boundaries redrawn as the population shifts.

The Peoria area is divided between the 3rd and 4th Supreme Court districts, respectively represented by Justices James D. Heiple of Pekin and Benjamin K. Miller of Springfield. Both are Republicans.

According to 1990 census figures, the 3rd District had 1.4 million inhabitants and the 4th District had 1.2 million. The Sun-Times analysis indicates the 3rd District is 8.5 percent below equality. The 4th District, which includes Springfield and Champaign, has had a consistently dwindling percentage and in 1990 was 21.9 percent below what it should be if the districts were equal. The 5th District, in the southern parts of the state, is 19.3 percent lower. The 2nd District has nearly 50 percent more residents than it would have if all four downstate districts were equal, the paper reported. The 2nd District covers 13 northern Illinois counties, including Chicago's fast-growing northern and western suburbs.

" There is an obligation on the part of the state to reflect this and redraw the lines," Shaman said.

Under one plan to equalize the population of the downstate districts, suggested last year by the Legislative Research Unit, the counties making them up would be shuffled. For instance, Peoria and Tazewell counties, currently part of the 3rd District, would become part of the 4th District, joining Woodford County. The population of both districts would grow to about 1.6 million.

Lawmakers have been unable to agree on a redistricting plan for several years. But the idea has been revived in the Capital recently because of some court decisions that stung the Legislature. For instance,

the court recently refused to draft rules for appealing the state's abortion notification law for minors. That prompted a federal court to block implementation of the law, which is presumed to be unconstitutional without an appeals process.

Two years ago, the court brought down a storm of criticism upon itself in the "Baby Richard" case. The justices ruled that a 3-year-old child should be taken from his long-time adoptive parents and returned to his biological father, a stranger to the boy. Heiple bore the brunt of the criticism, since he wrote the unanimous opinion and later issued a stinging rebuke of lawmakers and Gov. Jim Edgar for attempting to influence the case through legislation.

Rep. Terry Parke, R-Hoffman Estates, said he believes the population shifts in the state have been so great that the 1st District is over-represented. He has proposed a constitutional amendment that would give Republican-dominated suburbs more of a voice on the court, but he said he is not aware of any effort to bring the court districts into compliance with the "substantially equal" provision of the existing constitution.

Source: Peoria Journal Star, 2-23-96

NO. 16530

BEFORE THE SUPREME COURT OF ILLINOIS

In re the Matter of)
KENNETH ALAN KOZEL) Commission No. 96 CH 50
Respondent-Appellant) Filed: January 11, 2000
No. 1519727)

MOTION TO EXTEND TIME TO FILE PETITION FOR LEAVE TO FILE EXCEPTIONS

Now comes Kenneth Alan Kozel, the respondent appellant, and for his Motion to Extend Time to File Petition for Leave to File Exceptions, states as follows:

1. The respondent-appellant received a copy of the Report and Recommendation of the Review Board in the mail on January 3, 2000. The Review Board recommended a three-year suspension.

2. The Report and Recommendation of the Review Board was filed on December 30, 1999, some 15 months after the oral argument on September 11, 1998.

3. Since it has been so long since the oral argument, it will take much longer than usual to refresh one's recollection of the entire nature of the case, and to put the recommendation and findings of the Review Board in context. An extension of an additional 35 days is not unreasonable, in view of the length of time it took the Review Board to issue its Report and Recommendation

4. The Report and Recommendation of the Review Board states that "this is an unusual case" (p. 2), that "the hearing lasted for seven days" (p. 2), that "there were

1

extensive preheating proceedings" (p. 2), that "the record exceeds 5000 pages" (p. 2) and that "this is a serious case" (p. 3).

5. The Review Board acknowledged that the record exceeds 5000 pages. This is not an exageration. It's probably closer to 1 0,000 pages. Because of the sheer size of the record, additional time will be required to review and research the record and the law in regard to the findings of the Review Board.

6. The Review Board acknowledged that this is an unusual case, This case is unusual, and involves many complicated issues such as First Amendment rights, shifting the burden of proof to the respondent to prove his innocence and the intricacies and ramifications of filing a motion for substitution of judge. An extension of an additional 35 days is not unreasonable in view of the complicated nature of the issues involved.

7. The Report and Recommendation of the Review Board acknowledged that an interim suspension has been in place since February 13, 1998 (p. 2).

8. A petition for leave to file exceptions is due on or before February 3, 2000. The respondent is requesting an extension of 35 days to March 9, 2000.

WHEREFORE, the respondent-appellant prays that this court allow the respondent-appellant an additional 35 days to file a petition for leave to file exceptions, to and including March 9, 2000.

s/ Kenenth A. Kozel
Respondent-Appellant

2

VERIFICATION BY
CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the

undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

s/ Kenneth A. Kozel
Respondent-Appellant

Kenneth A. Kozel
801 Second Street
LaSalle, IL 61301
(815) 223-4400

3

No. 16530

IN THE SUPREME COURT OF ILLINOIS

In the Matter of)
Kenneth Alan Kozel) Commission No. 96CH50
No. 1519727) Filed: February 14, 2000

MOTION FOR EXTENSION OF TIME TO FILE ANSWER TO PETITION FOR LEAVE TO FILE EXCEPTIONS

Mary Robinson, Administrator of the Attomey Registration and Disciplinary Commission, by her attorney, Steven R. Splitt, respectfully moves this Court to extend the time for filing her Answer to the Respondent's Pefition for Leave to File Exceptions to the Report and Recommendation of the Review Board from February 17, 2000 to and including March 23, 2000. The affidavit of Steven R. Splitt is attached in support of this motion.

Respectfully submitted,
Mary- Robinson, Administrator
Attorney Registration and
Disciplinary Commission
By: s/Steven R. Splitt
Counsel for Administrator
One Prudential Plaza
130 East Randolph Drivie #1500
Chicago, Illinois 60601
Telephone: (312) 565-2600

STATE OF ILLINOIS)
County of Cook) ss.

AFFIDAVIT

Steven R. Splitt, being first duly sworn upon oath, deposes and states as follows:

1. On Decetnber 30,1999, the Review Board filed its Report and Recommendation in this case, recommending that Respondent, Kenneth Kozel, be suspended from the practice of law for three years.

2. I filed the Administrator's Petition for Leave to File Exceptions to the Report and Recommendation of the Review Board on February 3, 2000,

3. Respondent also filed a Petition for Leave to File Exceptions to the Report and Recommendation of the Review Board on February 3, 2000,

4. However, I did not receive a copy of the Respondent's petition until late afternoon on February 14, 2000.

5. The Administrator's Answer to Respondent's petition is due to be filed on February 17, 2000.

6. I will be unable to file the Administrator's Answer by the due date, not only because I have not timely received a copy of the petition, but because of the following other obligations:

a. I am responsible for preparing the Administrator's Appellee's Brief in the case of In re Charles Thomson, No. 98 CH 81, due to be filed with the Review Board on February 28, 2000;

b. I am responsible for preparing the Administrator's Petition for Leave to File Exceptions to the Report and Recommendation of the Review Board in the case of In re Maureen Walsh, No. 94 CH 653, due to be filed with this Court on March 8, 2000; and

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c. I am responsible for preparing the Administrator's Answer to the Respondent's Petition for Leave to File Exceptions to the Report and Recommendation of the Review Board in the case of In re John Petrulis, No, M.R. 16556, due to be filed with this Court on March 16, 2000 (if the Administrator's currently pending motion for extension of time is granted).

7. This motion is made, in good faith and not for purposes of delay.

/s Steven R. Splitt

Subscribed and swom to
before me this 14'h day of February, 2000,
/s Cynthia Cerino
Notary Public

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M.R. 16530

BEFORE THE SUPREME COURT OF ILLINOIS

In re the Matter of:)
KENNETH ALAN KOZEL,) Commission No. 96 CH 50
Respondent-Appellant,) Filed: March 17, 2000
No. 1519727)

MOTION FOR LEAVE TO FILE A SECOND SUPPLEMENT TO THE PETITION FOR LEAVE TO FILE EXCEPTIONS AND TO SUPPLEMENT THE RECORD

Now comes the respondent by counsel and moves for leave to file the attached Second Supplement to the Petition for Leave to File Exceptions and to supplement the record, and in support thereof, states as follows:

1. Recent statements by judges and attorneys made subsequent to the filing of the respondent's Petition for Leave to File Exceptions, are set forth in the Second Supplement to the Petition for Leave to File Exceptions that is attached hereto and incorporated herein by reference. These statements further demonstrate that Supreme Court Rule 8.2(a) is unconstitutionally void for vagueness and overbroad as interpreted by the Administrator, and further demonstrate that the Administrator has selectively prosecuted the respondent.

2. Certain statements have been made in television and radio commercials during the present campaign for the Illinois Illinois Supreme Court. A recent television commercial that aired on March 15, 2000, and on other dates, regarding Judge Thomas Fitzgerald, stated as follows:

"Courts under Fitzgerald sent innocent men to death row while killers walk the streets. Illinois becomes the only state to stop executions. The Tribune calls it a chilling spectacle of criminal justice gone terribly wrong. And Fitzgerald wants a promotion to the Supreme Court. We deserve better".

3. The commercial contained a picture of Judge Fitzgerald accompanied by the phrase, "Presiding Judge of a broken system". A videotape of this commercial accompanies this motion and had been marked Exhibit A.

4. In a commercial that recently aired on WGN Radio on March 14, 2000, and on other dates, it was stated that "Judge Bonnie Wheaton is not telling the truth".

5. In a commercial that recently aired on WGN Radio on March 8, 2000, and on other dates, it was stated that "Judge Bob Thomas is running a smear campaign".

6. The respondent has not been able to obtain a copy of a tape or transcript of the above radio commercials on WGN, and, therefore, has provided his affidavit. The respondent requests that this court accept his affidavit or, alternatively, enter an order allowing him to subpoena the tapes or transcripts from WGN.

7. Supreme Court Rule 8.2(a) provides that an attorney shall not make a statement he knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge. However, the Administrator has not filed a complaint against Supreme Court candidate Morton Zwick in regard to the above statements that Judge Thomas

Fitzgerald has sent innocent men to death row and that he is the presiding judge of a broken system.

8. The Administrator has not filed a complaint against Supreme Court candidate Bob Thomas in regard to the above statement that "Judge Bonnie Wheaton is not telling the truth".

9. The Administrator has not filed a complaint against Judge Bonnie Wheaton in regard to the statement that "Judge Bob Thomas is running a smear campaign".

10. The Administrator's position in regard to Rule 8.2(a) insofar as the respondent is concerned, is that each and every statement about a judge made by the respondent in a pleading, such as a motion for substitution of judge, impugns the integrity of the judge and violates the rule. The above statements made by the candidates for the Illinois Supreme Court go well beyond anything the respondent has ever said about a judge in any pleading, and certainly violate Rule 8.2(a). However, the Administrator has not filed a complaint against any of the respective candidates, and has selectively prosecuted the respondent.

11. In a recent letter from Attorney Joseph R. Martan to the editor of the Chicago Daily Law Bulletin, which appeared in the March 7, 2000, edition, a copy of which is attached hereto as Exhibit B, made the following statements about judges:

"Whining state judges".

"The Illinois Judges Association is hardly the most objective professional group".

"Second, too many state judges never had the law school record that would have gotten them hired as an associate at one of the prestige firms".

"How many state judges, serving or now off the bench, were Order of the Coif or Law Review editors?"

"Third, how many state judges have spent any appreciable time in private practice?"

"Fourth, how many state judges put in the 70 to 90-hour weeks expected of associates at the prestige firms in exchange for the exalted salaries? Not many, based on my on my private practice experience".

12. The above statements made by Attorney Martan also go well beyond anything the respondent has ever said about a judge in any pleading, and certainly violate Rule 8.2(a). The Administrator has not filed a complaint against Attorney Martan.

13. The above statements further demonstrate that Supreme Court Rule 8.2(a) is unconstitutionally void for vagueness and overbroad as interpreted by the Administrator. The Administrator has selectively prosecuted the respondent. The respondent requests that this court allow this motion so that he can fully present his case.

14. On February 24, 2000, an order was entered which allowed the Administrator an extension until March 23, 2000 to file an answer to the respondent's petition for leave to file exceptions. The respondent has no objection to a further extension of time being allowed to file an answer, if the above motion is allowed.

Wherefore, the respondent prays that this motion for leave to file Second Supplement to the Petition for Leave to File Exceptions and to supplement the record be allowed.

Peter H. Rodenburg
Attorney ay Law
505 First Street
LaSalle, IL 61301
(815) 223-3051

Respectfully submitted,
s/Peter H. Rodenburg
Counsel for the Respondent

Chicago Daily Law Bulletin
March 7, 2000, Tuesday

To the editor:

Associate salaries at Chicago's premier law firms are now in the $ 125,000 to $140,000 range. The Illinois Judges Association complains that state judges'salaries are now inadequate based on the salary hiking done in the silk stocking firms. Federal jurists also grumble and (rightly) complain that such salary levels mock the experience levels of not just the federal judiciary but many thousands of experienced attorneys as well. Well, it had to happen sometime and it looks like that time is now.

Market forces -- hah! This latest bout of associate salary jumps has nothing to do with market forces. It's prestige, stupid! The Silicon Valley firms supposedly stealing away all of this top flight (yet curiously unproven, at least in the world of real-life practice) legal talent are just as monopolized by the top school" elitists as are the big corporate law firms. This is little more than a smarmy, arrogant game between a very small, yet unfortunately very privileged, segment of the bar and business community. Unfortunately the game has the effect of leaving a very sour taste in the mouths of the remaining 95 percent of the practicing bar. The corporate clients are also grumbling with increasing volume.

Is a newly minted lawyer with negligible or no experience worth this kind of money? No, and that goes even for the Ivy Leaguers at the top of their classes -- they are unproven commodities who have yet to demonstrate they can apply law school theory to the real world. If Silicon Valley is willing to gamble on unknowns, that is its privilege -- but it should not be elevated to a benchmark for associates' salaries, judicial salaries, etc.

There are solutions. The corporate firms don't have to jump lock-step into these prestige contests. Of course, it might require them to look with a more expanded eye for potential associates -- maybe even beyond the 10 or 15 law schools they never want to go beyond. But this might be a most beneficial set of circumstances. There is plenty of good legal talent out there who didn't go to a Top 10 school -- they'll work just as hard (if not harder) for the opportunity and the firms will benefit by adding some very badly needed diversity in their ranks. And they won't have to pay $ 125,000 -- the opportunity alone will see talented attorneys willing to work for far less to start.

As for whatever effect the raises in associates' salary ranges has on the state judiciary, sorry, but this attorney isn't sympathetic. The Illinois Judges Association is hardly the most objective professional group." If state judges are so underpaid, why is there such a scramble by dozens of attorneys when a single associate judge vacancy opens up? Obviously, those brethren seeking the posts don't consider the current salary levels to be inadequate and paltry sums. The argument that judges can't make ends meet if they have to put two children through school doesn't wash. Welcome to the real world. Most

experienced attorneys in private practice do NOT make six-figure incomes.

As for Chief Justice Rehnquist's concerns, the salary complaint rings far truer here, arguably because the federal judiciary is drawn from a far more solid background, both academically as well as in terms of practical experience. However, the problem still boils down to the idiotic prestige contests waged by the premier law firms. May I respectfully suggest to the chief justice that he level some criticism at these firms -- the example they set has nothing to do with merit; it's plain arrogant greed. The American Bar Association might also take up the standard -- instead of worrying about trendy, politically correct issues, how about taking a bite into unrealistic associate compensation and the questionable image this creates of the bar as a whole?

As an attorney of 22 years' experience, I find increasingly offensive the argument state judges advance that their salaries aren't competitive with big law firm partners. Too bad. First, attorneys seeking the black robe are already well-informed as to the salary levels. If it's too low, don't apply. Second, too many state judges never had the law school record that would have gotten them hired as an associate at one of the prestige firms. How many state judges, serving or now off the bench, were Order of the Coif or Law Review editors? If you weren't, don't complain now because the prestige firms wouldn't have hired you. Third, how many state judges have spent any appreciable time in privatepractice? From the backgrounds revealed prior to elections or in the Law Bulletin biographies, most have never been in private practice or else rushed to secure a

governmental position at the first opportunity. Fourth, how many state judges put in the 70- to 90-hour weeks expected of associates at the prestige firms in exchange for the exalted salaries? Not many, based on my private practice experience. If opportunity to serve is too much of a financial sacrifice, then stand aside. There are plenty of experienced, non-political members of the bar who'd look forward to service on the bench and consider themselves quite adequately compensated. Maybe so-called merit selection is an idea whose time has come, if just to silence all those feeding from the public trough who complain the trough isn't big enough.

Egregiously high associate salaries. Whining state judges. Doesn't the bar have more important problems to ponder?

Joseph R. Martan
Western Springs

(4)

Supreme Court, U.S.
FILED

001121 JAN - 8 2001

OFFICE OF THE CLERK

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

KENNETH A KOZEL,

Petitioner,

v.

ATTORNEY REGISTRATION AND DISCIPLINARY COMMISSION OF THE SUPREME COURT OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari
To The Illinois Supreme Court

APPENDIX, VOLUME 4

KENNETH A. KOZEL
PETITIONER
801 SECOND STREET
LA SALLE, IL 61301
(815) 223-4400

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M.R. 16530

BEFORE THE SUPREME COURT OF ILLINOIS

In re the Matter of:) Filed: March 30, 2000
KENNETH ALAN KOZEL,) Commission No. 96 CH 50
Respondent-Appellant,) No. 1519727

MOTION FOR LEAVE TO FILE A THIRD SUPPLEMENT TO THE PETITION FOR LEAVE TO FILE EXCEPTIONS AND TO SUPPLEMENT THE RECORD

Now comes the respondent by counsel and moves for leave to file the attached Third Supplement to the Petition for Leave to File Exceptions and to supplement the record, and in support thereof, states as follows:

1. After the respondent's petition for leave to file exceptions was filed, it was reported that attorney David I. Grund recently referred to Cook County Circuit Judge Patricia Banks as "a disgrace" and as "an embarrassment", and that her ruling in a case was "certainly influenced by the immense power" of one of the litigants and "didn't involve the facts or the law."

2. A true copy of the article from the March 21, 2000, edition of the Chicago Daily Law Bulletin containing the above excerpt, is atta ched hereto as Exhibit A, pages 1 and 2. The excerpt appears on page 2, and is as follows:

David I. Grund, a Chicago divorce attorney representing Janna Tetzlaff, voiced displeasure with the judge's ruling. "Judge Banks is a disgrace," he said Tuesday. "She's an embarrassment to the good judges that sit in that division and that work hard every day to bring about justice for the litigants." The judge's ruling, Grund contended, "was certainly influenced

by the immense power that the man wields ... but certainly it didn't involvethe facts or the law." (Chicago Daily Law Bulletin, March 21, 2000).

3. Other attorneys have written letters to the editor of the Chicago Daily Law Bulletin expressing their displeasure about Attorney Grund's statements about Judge Banks. True copies of the letters that appeared in the March 24, 2000, edition of the Chicago Daily Law Bulletin are included on Exhibit B, which is attached hereto.

4. Nevertheless, the Administrator has not filed a complaint against Attorney Grund claiming that the above statements violate Supreme Court Rule 8.2(a). Rule 8.2(a) provides that an attorney shall not make a statement he knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge.

5. The failure of the Administrator to file a complaint against Attorney Grund represents a tacit approval that Attorney Grund's statements about Judge Banks are proper and do not violate Rule 8.2(a).

5. On the other hand, the Administrator has alleged that the respondent violated Rule 8.2(a) in various unpublished motions for substitution of judge that were filed in court at the request of the respondent's clients.

6. The statements of Attorney Grund should be made a part of the record in this case because the statements show the wide latitude that is allowed by the Administrator in interpreting Rule 8.2(a) depending on who the attorney is. Attorney Grund is a prominent divorce attorney in Chicago.

7. The respondent has never stated that a judge is "a disgrace" or "an embarrassment", or that a

judge's ruling was based on a litigant's "immense power" rather than "the facts or the law". The respondent has never stated or alleged anything about a judge even remotely close to Attorney Grund's statements. Nevertheless, the Administrator has charged the respondent with violating Rule 8.2(a).

8. If Attorney Grund's statements about Judge Banks are not actionable, then certainly neither are the respondent's.

9. The failure of the Administrator to file a complaint against Attorney Grund and other attorneys who have made similar statements about judges (see pages 12-17 of the Respondent's Petition for Leave to File Exceptions and the Second Supplement to the Petition for Leave to File Exceptions), and the Administrator's prosecution of the respondent in respect of Rule 8.2(a), is inconsistent, and clearly shows that Rule 8.2(a) is unconstitutionally vague, and that the Administrator selectively prosecutes perceived violations of Rule 8.2(a).

10. In addition, this is not Attorney Grund's first confrontation with a judge. A few years ago, Attorney Grund filed a lawsuit against Cook County Associate Judge James Donegan, seeking money damages for tortious interference with contract and prospective economic advantage. The Appellate Court affirmed the dismissal of Attorney Grund's complaint. Grund v. Donegan, 298 Ill. 3d 1034 (1st. Dist. 1998).

11. Some might view suing a judge for money damages as involving a judge's integrity under Rule 8.2(a). The Review Board in this case certainly does because it has cited four cases in which attorneys were disciplined for suing judges for money damages. In re Phelps, 55 Ill. 2d 319 (1973) (two-year suspension); In

re Mason, 33 Ill. 2d 53 (1965) (one-year suspension); In re Standidge, 333 Ill. 361 (1928) (six-month suspension); In re Sarellas, 50 Ill. 2d 87 (1971) (two-year suspension), even though the respondent has not been accused of suing a judge for money damages.

12. In spite of the dismissal by the Appellate Court of Attorney Grund's complaint seeking money damages against a judge, the Administrator has never filed a complaint against Attorney Grund for violating Rule 8.2(a).

13. The Administrator is seeking the ultimate in discipline against the respondent even though the Administrator has never filed a complaint against Attorney Grund for violating Rule 8.2(a) for suing Judge Donegan for money damages and for making the above statements about Judge Banks..

14. The Administrator's inconsistency clearly demonstrates that Rule 8.2(a) is unconstitutionally void for vagueness and overbroad as interpreted by the Administrator, and that the Administrator has selectively prosecuted the respondent.

Wherefore, the respondent prays that this motion for leave to file Third Supplement to the Petition for Leave to File Exceptions and to supplement the record with Exhibits A and B be allowed.

Peter H. Rodenburg
Attorney at Law
505 First Street
LaSalle, IL 61301
(815) 223-3051

Respectfully submitted,
S/Peter H. Rodenburg
Counsel for the Respondent

Chicago Daily Law Bulletin
March 21, 2000, Tuesday
Ruling in long-running divorce of lawyer couple criticized

MARTHA NEIL; Law Bulletin staff writer

A hard-fought divorce involving a prominent Chicago attorney has come to a conclusion, following an unheard-of 100-day trial. In a 223-page opinion that contained almost 200 pages of factual findings, Cook County Circuit Judge Patricia Banks on Monday granted the divorce, divided the couple's assets and ruled that Theodore R. Tetzlaff would get custody of the couple's three children.

A leading rainmaker at Jenner & Block, Tetzlaff had been married to Janna Tetzlaff for almost 20 years. She also is an attorney, but left her practice at Winston & Strawn after marrying. The 100-day trial is the longest anyone can remember in any divorce case here, lawyers for all sides agreed, and courthouse observers marveled at both its length and the legal fees that presumably were incurred, given the number of attorneys involved. I understand that the fees were well over $ 1 million," said Bernard B. Rinella, a Chicago divorce attorney who is a past president of the Illinois Chapter of the American Academy of Matrimonial Lawyers. And the estate is not a large estate, so it certainly was contentious way beyond the value of the case." That the divorce case didn't involve extraordinary issues, yet consumed 100 days in trial and resulted in the judge spending many months" to write an opinion, is very disturbing," Rinella said, adding that some of his clients, as well as other Cook County residents, were deprived of their fair share of the time of this judge."

Appeals in the case are expected, and lawyers for Janna Tetzlaff and the couple's children criticized the ruling Tuesday, while Theodore Tetzlaff's lawyers filed an emergency motion for a protective order sealing the opinion. I just was absolutely flabbergasted," said Jerome S. Levin, a well-known Skokie matrimonial lawyer appointed by a previous judge in the case to represent the Tetzlaff children. Banks' ruling on custody was just a complete reversal of what I thought would be the outcome," said Levin, a past president of the Illinois Chapter of the American Academy of Matrimonial Lawyers. Both he and a court-appointed psychologist had recommended that custody of the children be granted to Janna Tetzlaff, Levin said. Although part of the emphasis in the divorce proceedings had been a successful effort to try to get the children to relate to their dad and to have a good relationship with him," their mother was the primary caregiver, he said. In the judge's chambers, the children, aged 16, 13 and 12, indicated that they preferred to live with their mother, Levin said.

David L Grund, a Chicago divorce attorney representing Janna Tetzlaff, voiced displeasure with the judge's ruling. Judge Banks is a disgrace," he said Tuesday. She's an embarrassment to the good judges that sit in that division and that work hard every day to bring about justice for the litigants." The judge's ruling, Grund contended, was certainly influenced by the immense power that the man wields ... but certainly it didn't involve the facts or thelaw." Janna Tetzlaff got some retirement plans and some cash,

but the bulk -- and I mean the bulk of the estate -- went to him," Grund said.

Both Grund and Levin said they plan to appeal Banks' ruling, Levin on the issue of custody of the children and Grund on other grounds as well. However, attorney Donald S. Schiller, who along with lawyers from Jenner & Block represented Theodore Tetzlaff, said the judge's ruling was appropriate, although it was not what his client wanted in every regard, either.

Referring to a portion of Banks' ruling that criticized Grund for repeated attorney misconduct" during the trial that was deliberate and calculated to delay and frustrate these proceedings," Schiller said Grund's actions both in and out of court accounted for the length of the trial. The judge concluded that the mother was not truthful," Schiller said, leading to the decision on custody. Schiller declined to discuss specific issues in the case, saying that a protective order agreed to by both parties at the outset of the 1997 divorce case preclude him from doing so.

As of early Tuesday afternoon, he had made an emergency motion to seal Banks' opinion, contending that information that is not to be disclosed" under protective order permeates both the Judgment of Dissolution of Marriage and the Memorandum Opinion and Order." The emergency motion is expected to be heard Wednesday.

In re the Marriage of Theodore R. Tetzlaff and Janna D. Tetzlaff, No. 97 D 2127.

BEFORE THE HEARING BOARD OF THE
ILLINOIS ATTORNEY REGISTRATION
AND DISCIPLINARY COMMISSION

In the matter of
KENNETH ALAN KOZEL
No. 1519727
Commission No. 96 CH 50

SECOND AMENDED COMPLAINT

Mary Robinson, Administrator of the Attorney Registration and Disciplinary Commission by her attorney, Millicent Willis, pursuant to Supreme Court Rule 753(b), complains of Respondent, Kenneth Alan Kozel, who was licensed to practice law in the State of Illinois on May 20, 1975, and alleges that Respondent has engaged in the following conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute:

Count I

1. On September 29, 1982, the Administrator of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois (ARDC) filed a complaint against John A. Betts for engaging in alleged attorney misconduct. On October 3, 1985, the Supreme Court of Illinois concluded that Betts had engaged in misconduct and suspended him from the practice of law for six months. A copy of the Court's order and decision in In re John A. Betts, 109 Ill.2d 154 (1985) are attached as Exhibit One.

2. At all times relevant to the events alleged in this complaint, Supreme Court Rule 773 provided in part that an attorney who is the subject of a disciplinary proceeding that results

In the imposition of discipline has a duty to reimburse the ARDC for costs incurred in the investigation, hearing and review of such matters, On June 25, 1991, the Illinois Supreme Court entered an order allowing the Administrator's petition for costs against Betts in the amount of $3,833.06, pursuant to Supreme Court Rule 773, On September 11, 1991 the Supreme Court of Illinois entered an order denying Betts motion to vacate the June 25, 1991 order. Copies of documents referenced in paragraph two are attached as Exhibit Two.

3. As of November 5, 1991, Betts had not paid any part of the $3833.06 judgment entered against him by the Supreme Court of Illinois. On or about November 5, 1991, Betts filed a petition for relief under Chapter 7 of the Bankruptcy Code in the United States District Court for the Northern District of Illinois. Respondent represented Betts in the bankruptcy proceedings. In re John A. Betts, 91 B 21706. A copy of the petition is attached as Exhibit Three.

4. On March 4, 1992, the Administrator sought leave to file a complaint to determine the dischargeability of the debt Betts owed to the ARDC, and mailed to Respondent by overnight mail notice that a hearing concerning the Administrator's request would be conducted on March 6, 1992. The Administrator's complaint was docketed as adversary proceeding number 92 A 00325, ARDC v. Betts A copy of documents referenced in paragraph four are attached as Exhibit Four.

5. On March 6, 1992, neither Respondent nor his client appeared pursuant to the Administrator's notice of March 4, 1992, and, in their absence, Bankruptcy Judge John Squires heard the Administrator's motion

for leave to file the complaint and to determine the dischargeability of Betts' obligation.

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6. On February 24, 1993, Respondent filed a Motion for Supervisory Order before the Illinois Supreme Court, in which Respondent alleged that the Administrator not provided Betts with adequate notice of hearing of the adversarial complaint and that Juleann Hornyak, Clerk of the Illinois Supreme Court, had improperly certified documents which were attached as exhibits to the Adminstrator's pleadings. A copy of Respondent's motion for supervisory order is attached as Exhibit Five.

7. Respondent's motion for supervisory order also alleged that Judge Squires had to know that Betts had not received adequate notice of the hearing, and that the Administrator and Juleann Hornyak, Clerk of the Illinois Supreme Court, had presented false evidence. Respondent. stated that Judge Squires knew that "Robinson and (then, Commission attorney Ruthe M. Howes) Howes had 'cooked the books' as far as notice to Betts. But, John Squires was afraid of Robinson and the power of her office. Betts had to he the sacrificial Iamb and thats what happened." Respondent argued that these errors tainted Judge Squires's conduct and required an investigation by the Illinois Supreme Court. A copy of the motion for supervisory order is attached as exhibit five.

8. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge Squires knowingly admitted false evidence and intentionally permitted the Administrator and Ms. Hornyak to perpetrate a fraud upon the court. Respondent knew or reasonably

should have known that his allegations concerning Judge Squires related to the judge's qualifications or integrity, and that they were false. Respondent's statements regarding the integrity of Judge Squires were knowingly false or made with a reckless disregard as to their truth or falsity.

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9. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct;

b. making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;

c. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct;

d. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

e, engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

COUNT II

10. The Administrator realleges paragraphs 1 through 9 of Count I, above.

11. On August 10, 1993, the Federal Bankruptcy Court issued its final order in ARDC v. Betts, 92 A 00325. The Court decided that Betts' debt to the ARDC was nondischargeable A copy of the documents in this paragraph are attached as Exhibit Six.

12. On August 20, 1993, Respondent filed a notice of appeal before the U.S. District Court in the Northern District of Illinois in ARDC v. Betts. The matter was subsequently briefed by Respondent and the Administrator. A copy of the documents in this paragraph are attached as Exhibit Seven.

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13. On January 24, 1994, Judge Paul E. Plunkett entered a memorandum opinion and order affirming the ruling of the Bankruptcy Court. On February 17, 1994, Respondent filed a motion to alter or amend the memorandum opinion and order. Respondent's memorandum in support of the motion to alter or amend stated in part that: Bankruptcy judges are subject to the ARDC, pander to their every wish and whim and are always going to rule in their favor. After all, the bankruptcy court thinks its like being on the side of angels . . . This attorney remembers a story in the Wall Street Journal where in one Federal District where the District Court Judges would not even take the same elevator as the Bankruptcy Court Judges. That can probably mean anything you want it to mean.

A copy of the documents referred to in this paragraph is attached as Exhibit Eight.

14. Respondent's allegations concerned the judge's qualifications or integrity because they

indicated that Bankruptcy Judge Squires was biased in favor of the ARDC, and that he could not fairly administer justice in the proceedings. Respondent knew or reasonably should have known that his allegation that Bankruptcy Judge Squires was biased in favor of the ARDC related to the judge's qualifications or integrity, and that it was false. Respondent's statements regarding the integrity of Judge Squires was knowingly false or made with a reckless disregard as to its truth or falsity.

15. On March 25, 1994, Respondent filed an additional pleading stating that "Judge Plunkett's an old prosecutor." A copy of the documents referred to in this paragraph is attached as Exhibit Nine.

16. Respondent's allegation concerned the judge's qualifications or integrity because it indicated that Judge Plunkett, because of his former position as a prosecutor, was biased in favor of the ARDC, and that he was not impartial. Respondent's statement suggested that Judge

motion to consolidate, but later consolidated the cases on its own motion. A copy of the documents referred to in this paragraph is attached as Exhibit Thirteen.

22. Oral argument was held on Respondent's appeal on January 18, 1995. Following oral argument, the court affirmed the sanctions against Respondent from the bench.

23. On or about January 18, 1995, Respondent told a reporter from the Chicago Daily Law Bulletin that the court's decision was a 'flip approach" and that he "imagine[d] Judge Coffey decided the case before the oral argument, despite the fact that the judges were attentive and took notes while [Respondent] spoke."

24. Respondent's allegations concerned the qualifications or integrity of the judges because they indicated that Judge Coffey and the rest of the panel were biased in favor of the ARDC and did not give proper consideration to Respondent's arguments. Respondent's statements suggested that the panel of judges was not impartial and could not fairly administer Justice in the proceedings. Respondent knew or reasonably should have known that his statements alleging impropriety by the court were false, Respondent's statements regarding the integrity of Judge Coffey and the other judges on the panel were knowingly false or made with a reckless disregard as to their truth or falsity.

25. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2((1) of the Illinois Rules of Professional Conduct;

b. bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 31 of the Illinois Rules of Professional Conduct;

c. and making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, public officer, or of a candidate for election or appointment to judicial or legal office, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct;

d. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

e. engaging in conduct which tends to defeat the administration of justice or bring the courts or legal profession into disrepute in violation of Supreme court Rule 771.

COUNT III

26. In 1989, Respondent agreed to represent John A. Maurice in a bankruptcy case, and filed a Chapter 13 case which was later converted to a Chapter 7 case. A copy of the documents referred to in this paragraph is attached as Exhibit Fifteen.

27. Sometime thereafter, John A. Dornik, a creditor who had obtained a judgment against Maurice in 1987, filed a dischargeability complaint against Maurice under Title 11 USC, Secs. 523(a)(2)(A) and 523(a)(6). The Bankruptcy Court later found the debt Maurice owed to Dornik nondischargeable. A copy of the document referred to in this paragraph is attached as Exhibit Fifteen.

28. The District court later affirmed the Bankruptcy Court's decision, and Respondent then appealed to the U.S. Court of Appeals for the Seventh Circuit. Prior to filing the appeal, Respondent had not sought or obtained a stay of the District Court's order, and while the appeal was pending, Dornik sought enforcement of the 1987 judgment in state court. A copy of the documents referred to in this paragraph is attached as Exhibit Sixteen.

29. On November 8, 1993, Respondent filed a second chapter 13 case, In re John A. Maurice 93 B

23478, on behalf of Maurice, thereby staying Dornik's collection efforts. Dornik filed a motion to lift the automatic stay on November 19, 1993. Dornik served both Respondent and Maurice that day with the motion, and notice that the motion would be presented for hearing on November 24, 1993 in Chicago, Illinois. A copy of the documents referred to in this paragraph is attached as Exhibit Seventeen,

30. Respondent filed this action against Dornik for no substantial purpose other than to embarrass, delay, or burden Dornik, and to interfere with Dornik's efforts to enforce his judgment against Maurice.

31. At all times relevant to this complaint, Bankruptcy Rule 3015 (b) stated that: The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct. If a case is converted to chapter 13, a plan shall be filed within 15 days thereafter, and such time may not be further extended except for cause shown and on notice as the court may direct.

Respondent knew or should have known that he was required to file a Chapter 13 Bankruptcy plan within the time provided by Bankruptcy Rule 3015(b). A copy of the documents referred to in this paragraph is attached as Exhibit Eighteen.

32. Respondent failed to file a plan within the time provided by Bankruptcy Rule 3015 (b).

33. On November 24, 1993, neither Respondent nor Maurice appeared for the hearing on Dornik's motion. On that date, the Bankruptcy Judge entered an order which lifted the automatic stay, but also

continued the hearing on Dornik's motion until December 17, 1993,

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34. The Bankruptcy Court's November 24, 1993 order granted Respondent leave to file responsive pleadings by December 8, 1993. Respondent knew or should have known of the order shortly after it was entered. A copy of the documents referred to in this paragraph is attached as Exhibit Nineteen

35. On December 17, 1993, Respondent filed a motion to alter or amend the November 24, 1993 order, in which Respondent alleged that he had telephoned the Bankruptcy Court's chambers on November 24, 1993, and been advised that the motion was not on the call that day. Respondent contended that the court lacked jurisdiction because the matter should have been heard in Joliet, Illinois. Respondent also filed a motion to dismiss alleging that Dornik's actions constituted improper harassment, A copy of the documents referred to in this paragraph is attached as Exhibit Twenty.

36. At the hearing on December 17, 1993, Respondent filed a motion to disqualify Judge John H. Squires, contending that Squires was not impartial and treated Respondent and Maurice "differently than he treats other debtors and attorneys who come before him," Respondent further contended that Judge Squires "went along with" Dornik's continued harassment of Maurice. A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-One.

37. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Bankruptcy Judge Squires was biased

against Respondent and his client, that the judge was involved in a conspiracy or agreement with Dornik related to the alleged harassment of Maurice, and that he could not fairly administer justice in the proceedings. Respondent knew or reasonably should have known that his allegations concerning Judge Squires

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related to the judge's qualifications or integrity, and that they were false. Respondent's statements regarding the integrity of Judge Squires were knowingly false or made with a reckless disregard as to their truth or falsity.

38. On January 12, 1994, the Bankruptcy Court denied Respondent's motion to disqualify Judge Squires- On that same date, the trustee's motion to dismiss the case was granted because Respondent failed to file a plan with the petition as required by Bankruptcy Rule 3015(b). The Bankruptcy Court also determined that Maurice had failed to pay the first installment of the filing fee. A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Two.

39. The Court found that this case had been filed in bad faith because the motive in filing the case was to obtain the benefits of a stay without having to post a supersedeas bond, The January 12, 1994 order also stated that Respondents actions crossed "the line of what constitutes professional and civil behavior. It undermines the merits of his respective clients' cases," The Court lifted the automatic stay, and sanctioned Respondent and his client. Respondent was ordered to complete continuing legal education in the areas of bankruptcy and legal ethics. The court further advised

that it would report Respondent's conduct to the ARDC and the Executive Committee of the U.S. District Court for the Northern District of Illinois.

40. As of October 18, 1995, the date that Panel D of the Inquiry Board of the Commission voted that a complaint be filed against Respondent in this matter, Respondent had not taken any continuing legal education classes or paid the sanction of $2,282. A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Three.

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41. On February 11, 1994, Respondent filed motions to alter or amend the judgment of January 12, 1994 as to him and his client. In his motion to alter or amend the judgment as to Maurice, Respondent stated: What is sad about this case, is that Judge Squires is so prejudiced against the debtor and the debtor's attorney, and was so intent on finding bad faith and a reason to dismiss this case with prejudice, that he did not even bother to do the most fundamental thing, check the clerk's records to see if payment of the first $40.00 installment had been made, before he entered his order of January 12, 1994.

Respondent further argued that: The dismissal of the debtor's case with prejudice, is another example of how Judge Squires has lost his objectivity, and of Judge Squires' refusal to treat the debtor and the debtor's attorney like everyone else that appears before him. . . For some reason, Judge Squires does treat Maurice differently than he does Dornik.

A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Four.

42. Respondent's motion also stated: Judge Squires cites the case of Attorney Registration and Disciplinary Commission v. Betts. The debtor's attorney gets the distinct impression that Judge Squires is going to make the debtor and the debtor's attorney pay dearly for the debtor's attorney's representation of unpopular clients like Betts.

Respondent continued: The debtor is being prejudiced because of Judge Squires' dislike for the debtor's attorney. . . Judge Squires should not penalize the debtor for his obvious dislike of the debtor's attorney, or for the debtor's attorney's representation of an unpopular client in the case of ARDC v. Betts.

A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Five.

43. Respondent concluded that " If Judge Squires is truly not prejudiced against the debtor as he claims, he should vacate the dismissal with prejudice, and reinstate the case.

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44. In his motion to alter or amend as to the debtor's attorney, Respondent adopted all paragraphs of the motion to alter or amend as to the debtor, and argued further that "Judge Squires should have simply disqualified himself from this case when he was considering an attempt to impose discipline on the debtor's attorney, and should do so now, since he has made himself a witness in any disciplinary proceeding that may arise, out of his entry of the order of January 12, 1994."

45. On March 31, 1994, the court amended the portion of its opinion which found that Maurice failed to pay the first installment of the filing fee, but otherwise affirmed its decision of January 12, 1994. A copy of the documents

referred to in this paragraph is attached as Exhibit Twenty-Six.

46. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge Squires was biased against Respondent and Respondent's client, and that he could not fairly administer justice in the proceedings. Respondent knew or reasonably should have known that the allegations of impropriety by Judge Squires referred to in paragraphs 41, 42, 43 and 44, above, were false. Respondent's statements regarding the integrity of Judge Squires were knowingly false or made with a reckless disregard as to their truth or falsity.

47. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct;

b. failing to act with reasonable diligence in representing a client, in violation of Rule 1.3 of the Illinois Rules of Professional Conduct;

c. bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct;

d. using means In representing a client that have no substantial purpose other than to embarrass, delay, or burden a third person in violation of Rule 4,4 of the Illinois Rules of Professional Conduct;

d. making a statement the lawyer knows

to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct;

f. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a) (5) of the Illinois Rules of Professional Conduct; and

g. engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

COUNT IV

48. In 1984, Respondent agreed to represent Tracy Greenwood, the Administrator of the Estate of John Greenwood, in a wrongful death action against Northern Illinois Gas Company NIGAS in the Circuit Court of the Thirteenth Judicial District, Greenwood v. NIGAS, 84 L 179.

49. On November 23, 1993, the Circuit Court of LaSalle County granted a preliminary injunction in favor of NIGAS. Respondent appealed to the Third District Appellate Court of Illinois on behalf of Greenwood, alleging that the order was improperly entered in Will County, and briefs were filed by both parties. Greenwood v. NIGAS, 3-94-0001, A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Seven.

50. In April 1994, Respondent filed a motion to strike the appellee's brief, alleging that the brief contained the facsimile signature of F. Kent Ayers, counsel for NIGAS, rather than an original signature. NIGAS maintained that the brief bore an original signature, and that assuming

arguendo that the brief did contain a facsimile signature, it would still comply with Illinois Supreme Court Rule 137. A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Eight.

51. At all times relevant to this complaint, Rule 137 provided in part that "If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or moving. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the party or panics the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney fee."

52. On April 21, 1994, the Appellate Court for the Third District denied Respondent's motion to strike. On June 15, 1994, Respondent then filed a motion for supervisory order before the Supreme Court of Illinois asking that NIGAS' brief be stricken because it was not signed. Greenwood v, NIGAS, No. 77395. A copy of the documents referred to in this paragraph is attached as Exhibit Twenty-Nine.

53. NIGAS responded to the motion for supervisory order on June 21, 1994. NIGAS contended that the question of whether the signature complied with Rule 137 had been addressed twice before on a prior appeal of the same case. NIGAS requested that Respondent be sanctioned for filing a spurious motion. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty.

54. On June 22, 1994, the Supreme Court of Illinois denied the motion for supervisory order. On July 19, 1994, the Court sanctioned Respondent, and ordered him to pay attorneys fees and other expenses incurred by NIGAS in defending against the motion for supervisory order. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-One.

55. Respondent's purpose in filing the motion for supervisory order was merely to harass or maliciously injure Ayers.

56. Respondent's actions were frivolous because the issue of whether the facsimile signature on the NIGAS brief complied with Rule 137 had already been resolved in a prior appeal. Moreover, at all times relevant to this complaint, Rule 137 provided that the remedy for a signing in violation of the Rule is the imposition of a sanction and not the remedy that Respondent requested, striking the brief,

57. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client when the lawyer knows or reasonably should know that such action would serve merely to harass or maliciously injure another in violation of Rule 1.2(0(1) of the Illinois Rules of professional Conduct;

b. bringing a proceeding or asserting an issue that is frivolous, in violation of Rule 3.1 of the Illinois Rules of Professional Conduct;

b. using means to represent a client that have no substantial purpose other than to embarrass, delay, or burden a third person in

violation of Rule 4.4 of the Illinois Rules of Professional Conduct; and

d. engaging in conduct that is prejudicial to the administration of justice, In violation of Rule 8.4(a)(5) of the Illinois Rules of professional Conduct.

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COUNT V

58. On June 18, 1991, Respondent and attorney Kevin Kelly filed their appearances in the Circuit Court of LaSalle County on behalf of Donna Fegley in Fegley v. Johnson, 90 F 198, A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Two.

59. On June 24, 1991, Kelly filed a verified petition for change of venue, alleging that Judge H. Chris Ryan was prejudiced against him, The petition was granted on June 26, 1991, and the case was reassigned to Judge Cynthia M. Raccuglia. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Three.

60. On November 5, 1991, Respondent filed a motion for continuance and a motion to disqualify Judge Raccuglia, alleging that she was prejudiced in favor of his opponents. Respondent charged that Judge Raccuglia had become "an advocate" on behalf of opposing counsel, had advanced the date of the pretrial, and was unwilling to stay proceedings in the trial process in order to afford his client the opportunity to utilize the appellate process. Judge Raccuglia denied both motions on November 15, 1991, A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Four,

61. Respondent's allegations concerned the judge's qualifications or integrity because they

indicated that Judge Raccuglia was biased in favor of Respondent's opponents, that she was assisting opposing counsel in his arguments, and that she could not fairly administer justice in the proceedings. Respondent's statements that Judge Raccuglia was prejudiced in favor of his opponents were false. Respondent knew or reasonably should have known that the allegation of Impropriety by Judge Raccuglia was false. Respondent's statements regarding the integrity of Judge Raccuglia were knowingly false or made with a reckless disregard as to their truth or falsity.

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62. On February 24, 1992, Respondent filed a memorandum in support of his November 5, 1991 motion to disqualify. Respondent stated that Judge Raccuglia's father had a referral agreement with counsel for Johnson. He also produced a 1988 letter that Judge Raccuglia had written to Respondent while she was a practicing attorney. In the letter, Judge Raccuglia asked for clarification of an issue, and mentioned the possibility of filing a Section 2-611 motion against Respondent for pleading untrue allegations without reasonable cause. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Five.

63. Judge Raccuglia recused herself based on the motion, and the case was reassigned to Judge Robert H. Adcock. On October 7, 1993, Judge Adcock recused himself. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Six.

64. On October 12, 1993, Judge Howard Wampler was assigned to the case. On October 18, 1993, Judge Wampler recused himself, and the case

was reassigned to Judge Charles E. Marshall. Respondent filed a motion to quash service of process. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Five

65. On November 23, 1993, Judge Marshall denied Respondent's motion to quash, and ruled that proper service had been made on Respondent's client, Donna Fegley. On that same day, Respondent filed a motion to substitute judges as a matter of right. Judge Marshall denied Respondent's motion, A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Eight.

66. Respondent also filed that day, a petition for substitution of judges for cause, alleging that opposing counsel had participated in a case referral agreement with Judge Marshall for several years. Judge James Lanuti conducted a hearing on this petition instanter. Judge Lanuti

determined that Respondent's allegations were "untrue and made without any basis in fact or law," and denied Respondent's motion. A copy of the documents referred to in this paragraph is attached as Exhibit Thirty-Nine.

67. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge Marshall was biased in favor of Respondent's opponents, that he maintained a relationship with opposing counsel which undermined his impartiality and that he could not fairly administer justice in the proceedings. Respondent's statements which indicated a lack of integrity by Judge Marshall were false.

68. Respondent's statements regarding the integrity of Judges Raccuglia and. Marshall were knowingly false or made with a reckless disregard as to their truth or falsity.

69. Respondent's repeated motions and petitions to disqualify judges were filed merely to harass or maliciously injure the judges against whom they were filed, and Respondent had no basis for doing so that was not frivolous.

70. By reason of the conduct outlined above, Respondent has engaged in the following misconduct

a. asserting a position on behalf of a client that serves merely to harass or maliciously injure another, in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct;

b. making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;

c. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and

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d. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

COUNT VI

71. On January 7, 1994, Respondent represented Tracy Greenwood, successor administrator of the estate

of John Gilbert Greenwood in the consolidated cases of Estate of Greenwood, 84 P 62, and Greenwood v. NIGAS, 84 L 179, in the Circuit Court of LaSalle County.

72. Between November 19, 1990, and January 7, 1994, two judges recused themselves in both matters, and two motions for change of venue filed by Respondent had been granted.

73. On January 7, 1994, Respondent filed a motion to substitute judges for cause in case numbers \$4 P 62 and 84 L 179, in which Respondent alleged that Judge Stephen D. White's decisions were racially motivated Respondent stated therein that "On December 10, 1993, and at the request of NIGAS, Judge White directed that TRACEY GREENWOOD appear before him on January 7, 1994, for no specific purpose, other than to be asked whether she can read, and whether she can add two and two, things that he would never ask a white person." (emphasis in original) Respondent also alleged that Judge White favored the Northern Illinois Gas Company (NIGAS) because of a personal and business relationship with the company. A copy of the documents referred to in this paragraph is attached as Exhibit Forty.

74. On January 7, 1994, Judge William R. Banich conducted a hearing on the motion to substituted Judge White for cause, found no evidence to support the allegations, and denied the motion. Respondent then filed a motion to substitute judges as a matter of right. A copy of the documents referred to in this paragraph is attached as Exhibit Forty-One.

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75. Respondent's allegations concerned the judge's qualifications or integrity because they

indicated that Judge White was biased against Respondent's client on the basis of race in violation of all applicable legal and constitutional provisions, the judge asked Ms. Greenwood racially motivated and embarrassing questions, and that he could not fairly administer justice in any proceedings involving racial minorities, Respondent knew or should have known that the allegations of impropriety by Judge White were false. Respondent's statements regarding the integrity of Judge White were knowingly false or made with a reckless disregard as to their truth or falsity. Respondent's motion to disqualify was filed merely to harass or maliciously injure Judge White,

76. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client that serves merely to harass or maliciously injure another, in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct;

b. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and

c. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

COUNT VII

77. In 1993, Respondent represented Martin L. Gibbs in People v. Gibbs, 93 CF 69, 93 CM 401, 93 TR 2346, 93 TR 2347, and 93 TR 2348 in the Circuit Court of Bureau County.

78. On October 19, 1993, following two motions for change of judges, Chief Robert Carter reassigned these matters to Judge Charles E. Marshall.

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79. On October 26, 1993, Respondent filed a motion to vacate the order of assignment, basing his argument on the claim that the assignment had not been made pursuant to the usual rotation system." Judge Carter denied Respondent's motion on October 27, 1993. In his October 27, 1993 order denying Respondent's motion, Judge Carter held that "the MOTION TO VACATE ORDER OF ASSIGNMENT are (sic) frivolous, patently without merit, and an Improper attempt to interfere with the assignment authority of the Chief Judge." A copy of the documents referred to in this paragraph is attached as Exhibit forty-two.

80. On October 29, 1993, Respondent filed a motion to reconsider, alleging that Judge Carter treated Gibbs "differently from all other parties. . . and denies the defendant due process and equal protection of the law, in violation of the state and federal constitutions." Respondent further alleged that the language used by Judge Carter in denying the October 26, 1993 motion was "unduly harsh and uncivil." Respondent also stated that Judge Carter was prejudiced against him. A copy of the documents referred to in this paragraph is attached as Exhibit Forty-Three.

81. On November 2, 1993, Judge Carter denied the motion to reconsider. A copy of the documents referred to in this paragraph is attached as Exhibit Pony-Four.

82. Respondent's allegations concerned the judge's qualifications or integrity because they

indicated that Judge Carter was biased against Respondent and Respondent's client, that the judge intentionally violated the state and federal constitutions, and that he could not fairly administer justice in the proceedings. Respondent knew or should have known that the allegations of impropriety by Judge Carter were untrue, Respondent's statements regarding the

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integrity of Judge Carter were knowingly false or made with a reckless disregard as to their truth or falsity. Respondent s motion was filed merely to harass or maliciously injure Judge Carter.

83. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a client that serves merely to harass or maliciously injure another, in violation of Rule 1.2(0(1) of the Illinois Rules of professional Conduct;

b. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and

c. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

COUNT VIII

84. On August 15, 1991, Respondent filed a special and limited appearance in Estate of Glen Serby, 89 P 343, in the Circuit Court of LaSalle County. referred to in this paragraph is attached as Exhibit Forty-Five.

85. On March 2,1992, Judge James A. Lanuti ordered that a citation be issued directing John Betts to appear in court in 89 p 343 to show cause why Betts should not turn over assets belonging to the Serby estate. A copy of the documents referred to in this paragraph is attached as Exhibit Forty-Six.

86. On May 18, 1992, Respondent petitioned for a change of venue as a matter of right. Judge Lanuti granted the motion. A copy of the documents referred to in this paragraph is attached as Exhibits Forty-Seven and Sixty-One.

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87. The case was reassigned to Judge Cynthia M. Raccuglia on June 4, 1992. On April 6, 1993, Judge Raccuglia recused herself sua sponte The case was reassigned to Judge Stephen White. A copy of the documents referred to in this paragraph is attached as Exhibit Forty-Eight.

88. On August 12, 1994, Respondent's motion to quash service on the citation was denied. Respondent then filed a motion to change judges for cause, alleging that Judge White was biased because Respondent had accused White of making racial slurs in another case. Chief Judge Carter assigned Judge William Banich to hear the motion to change judges. A copy of the documents referred to in this paragraph is attached as Exhibit Forty-Nine.

89. On the same day, Respondent petitioned to change judges for cause, alleging that Banich also was biased because Banich had previously denied a petition for change of judges for cause in another matter involving Judge White. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty.

90. Chief Judge Carter assigned Judge Cynthia Raccuglia to decide the motion to disqualify Judge Banich. Respondent then filed a motion to disqualify Judge Raccuglia, arguing that she had previously recused herself in the same case. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-One.

91. Chief Judge Carter assigned Judge Howard C. Ryan, Jr. to bear the motion to disqualify Judge Raccuglia. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Two.

92. On August 15, 1994, Respondent sent a facsimile to Chief Judge Carter with what Respondent referred to as "suggestions" about procedures for addressing motions to change judges. Respondent alleged therein that Judge Carter was attempting "to manipulate the outcome

of cases by use of the assignment power he claims to have because of his office." A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Three.

93. On August 19, 1994, Respondent filed a motion to disqualify Judge Ryan, arguing that Judge Lanuti had tainted Judge Ryan and other members of the "judicial pool' by speaking with them about John Betts. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Four.

94. On August 19,1994, Judge Garter assigned Judge Paul Root to hear the motions against Judges White, Banich, Raccuglia, and Ryan. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Five.

95. On August 26, 1994, Respondent petitioned to change judges for cause, alleging that Judge Root could not be impartial. At 9:58 a.m., on that same day, Respondent sent a facsimile to Judge Root, informing the judge that Respondent would be late appearing in the case because of a conflicting court appearance in Chicago. Respondent also instructed the judge not to enter a default judgment against him. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Six.

96. Respondent's allegations concerned the judges' qualifications or integrity because they indicated that Judges Raccuglia, Banich, White, Ryan and Carter were biased against Respondent, and that none of them could fairly administer justice in the proceedings. Respondent's allegations also concerned the Judge Carter's qualifications or integrity because they indicated that Judge Carter was attempting to influence the decisions in cases by assigning them to a specific judge. Respondent knew or should have known that the allegations of impropriety he made against Judges Raccuglia, Banich, White. Ryan and Carter were false. Respondent's

statements regarding the integrity of these judges were knowingly false or made with a reckless disregard as to their truth or falsity. Respondent's motions were filed merely to harass or maliciously injure the judges against whom they were filed.

97. By reason of the conduct outlined, Respondent has engaged in the following misconduct:

a. asserting a position on behalf of a

client that serves merely to harass or maliciously injure another, in violation of Rule 1.2(0(1) of the Illinois Rules of Professional Conduct;

b. making a statement of material fact or law to a tribunal which the lawyer knows or reasonably should know is false, in violation of Rule 3.3(a)(1) of the Illinois Rules of Professional Conduct;

c. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct; and

d. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

COUNT IX

98. On May 26, 1994, Respondent wrote to Ray Breen, who was then Executive Director of the Judicial Inquiry Board, regarding the Chief Judge of the Thirteenth Judicial Circuit, Robert L. Carter.

99. In his correspondence to Breen, Respondent alleged that Judge Carter "won't make the circuit clerk follow Illinois Law." Respondent stated that Judge Carter and the clerk, David Carry were engaged in a political conspiracy:

David Carey's bond fails to comply with Illinois law. . . While you have to understand that I don't know for sure, but I think these issues are being

avoided because both Carter and Carey are Democrats. After all, if party unity doesn't mean something, then what does?

100. Respondent knew or should have known that his accusations against Judge Carter were false because he had no evidence to support his position that the judge allowed Carey to violate the law because of party unity.

101. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge Carter condoned the alleged illegal actions of Mr. Carey. Respondent's statements regarding the integrity of Judge Carter were knowingly false or made with a reckless disregard as to their truth or falsity. Respondent's letter was sent to Mr. Breen merely to harass or maliciously injure Judge Carter.

102. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2 (a) of the Illinois Rules of Professional Conduct;

b. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

c. engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771,

COUNT X

103. By letter dated December 15, 1993, Respondent complained to Ray Breen that Judge

Stephen D. White had made "racial slurs" against his client, He also complained that Judge White had prohibited his client from collecting on her judgment.

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104. Respondent knew or should have known that the allegations against Judge White were false because Judge White did not use any derogatory or disparaging words against Respondent's client, and because the judge had entered a preliminary injunction against Respondent's client to prevent her from collecting a judgment against NIGAS pending a final decision by the appellate court on the amount NIGAS was required to pay.

105. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge White was biased against Respondent's client on the basis of race , that the judge had improperly interfered with the enforcement of a judgment against NIGAS, and that he could not fairly administer justice in any proceedings involving racial minorities. Respondent's statements regarding the integrity of Judge White were knowingly false or made with a reckless disregard as to their truth or falsity, Respondent's letter was sent to Mr. Breen merely to harass or maliciously injure Judge White.

106. By reason of the conduct outlined above, Respondent has engaged in the following misconduct

a. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct;

b. engaging in conduct that is prejudicial

to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

c. engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

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COUNT XI

107. On March 8, 1994, Respondent wrote to Dan Meuller, in the Administrative Office of the Illinois Supreme Court. Respondent alleged that David Carey, Clerk of the Circuit Court of LaSalle County, had improperly destroyed an active file in the case of Befts v. Meteille, 88 SC 2538. A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Seven.

108. On April 4, 1994, Respondent wrote to Jim Baker, Vice-President of Western Surety Company, the company which provided the Circuit Court Clerk's surety bond. He stated that "The Chief Judge, fellow democrat (sic) of Carey, wants to just ignore the matters. That's been forwarded on to the Illinois Judicial Inquiry Board for them to sort out." A copy of the documents referred to in this paragraph is attached as Exhibit Fifty-Eight.

109. Respondent's allegations concerned the judge's qualifications or integrity because they indicated that Judge Carter failed to act appropriately because of his political affiliation. Respondent knew or should have known that the allegations of impropriety against Judge Carter were false. Respondent's statements regarding the integrity of these judges were

knowingly false or made with a reckless disregard as to their truth or falsity.

110. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicative officer, or public legal officer, in violation of Rule 8.2(a) of the Illinois Rules of Professional Conduct;

b. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

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c. engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

COUNT XII

111. As of May 12, 1988, Respondent had not been admitted to practice in the U. S. District Court for the Central District of Illinois.

112. On May 12, 1988, Respondent appeared before the U, S. District Court for the Central District of Illinois.

113. In 1988, Local Rule 1(E) of the United States District Court for the Central District of Illinois provided that '[a]ny person who, before his or her admission to the bar of this Court ... exercises in this District any of the privileges of a member of said bar in any action or proceeding pending in this Court, or who pretends to he entitled to do so, may be adjudged guilty of contempt of court." A copy of the documents

referred to in this paragraph is attached as Exhibit Fifty-Nine.

114. Respondent's appearance on May 12, 1988 violated the regulation of the legal profession in the U. 5, District Court for the Central District of Illinois.

115. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; and

b. engaging in conduct that is prejudicial to the administration of justice, in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct.

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COUNT XIII

116. On or about October 17, 1991, Johanna R. Yeager was injured during the course of her employment with Today Cartage, Inc. while using a pressure washer.

117. On or about October 26, 1991, Respondent and then-attorney John A. iBetts, agreed to represent Ms. Yeager before the Illinois Industrial Commission in matters relating to the October 17, 1991 incident.

118. On or about November 4, 1991, Respondent and Betts, on behalf of Ms. Yeager, filed an Application for Adjustment of Claims before the Illinois Industrial Commission. The Secretary of the Commission docketed the matter as Johanna Yeager v. Today Cartage, Inc., number 91 WC 57188.

119. Between November 4, 1991 and January 12, 1995, Respondent took no action to pursue case number 91 WC 57188.

120. On January 12, 1995, the Industrial Commission issued an order dismissing case number 91 WC 57188 for want of prosecution. The Industrial Commission notified Respondent of the dismissal on or about March 3, 1995, and Respondent knew or should have known of the dismissal shortly thereafter.

121. In 1995, Respondent knew that Betts had been disbarred on September 27, 1993, and that Betts could no longer represent Yeager in matters relating to case number 91 WC 57188. A copy of the documents referred to in this paragraph is attached as Exhibit Sixty.

122. Respondent did not advise Ms. Yeager that case number 91 WC 57188 had been dismissed or take action to reinstate the case.

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123. Between November 4, 1991, and March 31, 1995, Ms. Yeager telephoned Respondent between 20 and 30 times to inquire about the status of her case. Respondent returned only three telephone calls to Ms. Yeager during that time.

124. In late 1994 or early 1995, Respondent telephoned Ms. Yeager and left a message on her answering machine. Respondent's message to Yeager was that he had received a demand letter from the defendant and that every-thing was "going fine."

125. Respondent telephoned Ms. Yeager on or about March 31, 1995, but Ms. Yeager was not at home. Respondent left a message for Ms. Yeager with her son stating that "everything was settled."

126. Respondent's statements concerning the status of case number 91 WC 57108, referred to in paragraphs 125 and 126, above, were false at the time

that he made them because case number 91 WC 75188 had been dismissed.

127. On or about March 31, 1995, Ms. Yeager discovered that case number 91 WC 57188 had been dismissed and hired a new attorney to represent her in that matter.

128. By reason of the conduct outlined above, Respondent has engaged in the following misconduct:

a. failing to act with reasonable diligence and promptness in representing a client in violation of Rule 1.3 of the Illinois Rules of professional Conduct;

b. failing to keep a client reasonably informed about the status of a matter in violation of Rule 1.4 of the Illinois Rules of Professional Conduct;

c. failing to make reasonable efforts to expedite litigation consistent with the interests of the client in violation of Rule 3.2 of the Illinois Rules of Professional Conduct;

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d. engaging in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct;

e. engaging in conduct that is prejudicial to the administration of justice in violation of Rule 8.4(a)(5) of the Illinois Rules of Professional Conduct; and

f. engaging in conduct which tends to defeat the administration of justice or bring the courts or the legal profession into disrepute in violation of Supreme Court Rule 771.

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WHEREFORE, the Administrator requests that this matter be assigned to a panel of the Hearing Board,

that a hearing be held, and that the panel make findings of fact, conclusions of fact and law, and a recommendation for such discipline as is warranted.

Respectfully Submitted,
Mary Robinson, Administrator
Attorney Registration and
Disciplinary Commission
By: Millicent Willis /s/

Millicent Willis
Counsel for the Administrator
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130 First Randolph Drive
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312-565-2600

Legal shortcuts run into some dead ends

By: William Glaberson

The New York Times

To cope with a flood of cases, appeals judges across the country are increasingly talking shortcuts that critics say undermine the fairness of the justice system, including issuing decisions that don't count as precedent and deciding thousands of appeals with one-word rulings, like "Affirmed."

Judges defended the shortcuts as essential to keep the courts functioning because litigious Americans were filing more and more suits. The critics of the fast-track techniques were long cast as disgruntled gadflies.

But for the first time, the critics' arguments are finding their way into mainstream legal thinking. The most important sign of change was a startling federal appeals court ruling in August that said federal courts violated their constitutional power with the no-precedent ruling, giving the critics their biggest victory ever. The decision, by a three-judge panel of the Sth U.S. Circuit Court of Appeals in St. Louis, has some legal experts saying a review of appeals procedures nationally now seems necessary.

"I think we've reached a point where everybody's going to ask, 'Has this gone too far?'" said Arthur D. Hellman, an expert on appeals courts at the University of Pittsburgh School of Law.

The three-judge panel, deciding a tax case, agreed with one of the critics main assertions: that the courts ordered far too many of their decisions not be published in official law books. By most courts' definition, such rulings cannot be used as precedent for other cases, which the critics say encourages

inconsistent rulings that sometimes seem based on whim or bias.

Judges say unpublished opinions can be more succinct than full published rulings and can be issued without worrying about prior cases or the effect on future law. Of almost 25,000 federal appeals rulings last year, over 17,000 went unpublished, according to government reports. In some state courts the proportion of unpublished rulings has climbed to more than 90 percent. The result, say the critics, is a vast underground body of law.

The panel in St. Louis agreed. "The judicial power to determine law is a power only to determine what the law is, not to invent it," said the opinion by Circuit judge Richard S. Arnold, an influential judge who was considered for the Supreme Court in the early years of the Clinton administration. The ruling came after a number of other signs that the critics of judicial shortcuts were making progress.

In February, the American Bar Association took aim at the one-word opinions. A bar association resolution called on all appeals courts to provide "at a minimum reasoned explanations for their decisions."

Last year, the federal appeals court in Philadelphia changed its policy and decided to limit its use of one-word decisions. In addition, several other federal appeals courts have recently changed their rules to allow lawyers to refer to unpublished rulings, even though those rulings are not binding as precedent.

The California legislature considered, but did not pass, a bill last spring that would have required that all state appeal opinions be publicly available and valid as precedents. But that there were legislative

hearings on the bill showed more responsiveness to the issue than there had been in the past, as California brothers Kenneth and Michael Schmier could attest.

After they lost a real estate case in the 1980s, the Schmiers turned attacks on court shortcuts into a vocation. They sued the California Supreme Court over the issue, lost, and are now asking the U.S. Supreme Court to review their case.

Michael Schmier ran for California attorney general and U.S. senator in recent years on the single-issue platform of ending the shortcuts. He failed, and both brothers have grown accustomed to seeing their battle described as eccentric. "I suppose the idea that you can stand up and try to force the judiciary of America to change is nuts," Kenneth Schmier said in an interview last week.

That may be changing. Like the California legislators who sponsored the bill considered last spring, the three federal judges in St. Louis said the appeals shortcuts raised fundamental questions. The nations founders, the decision said, intended federal judges' decisions to become precedent, with each case setting the foundation for later law.

As a result, Arnold wrote, the panel had to follow the reasoning of one of the court's earlier decisions even though that decision was unpublished. Circuit Judge Gerald W. Heaney and U.S. District Judge Paul A. Magnuson agreed.

Legal experts say the panel's ruling can be reversed by the full 10-member Court of Appeals and may reach the U.S. Supreme Court. But "whatever happens to that case, this issue won't go away and will

only get larger," said Stephen R. Barnett, a law professor at the University of California at Berkeley.

The decision applies only to federal courts, but lawyers say similar claims are certain to be made in state appeals courts.

Judges who criticized the ruling said the courts would grind to a halt if every case were treated as a precedent. Alex Kozinski, a judge on the federal appeals court in San Francisco, said making every case count as precedent would force judges into unnecessary writing on routine matters. "It is a fallacy," Kozinski said, "to think having more out there is better. More garbage is not better."
(Source: Chicago Daily Law Bulletin, 10-11-00)

Respondent's Exhibit 4-1
News Tribune March 1, 1995
High court gives reasons for Baby Richard decision

Chicago (AP) - The Illinois Supreme Court ordered Baby Richard returned to his biological father based on invented facts, an attorney for the adoptive parents says.

Attorney Jerold Solovy accused the justices of basing their decision on information that was "made up out of thin air." He said the justices "were mad at my clients."

Respondent's Exhibit 4-2
Chicago Daily Law Bulletin January 25, 1995
High court gives custody of "Baby Richard" to biological father
Springfield - ...

The attorney for the adoptive parents, Jerold Solovy, said he would ask the court to recall its mandate to allow the couple known in court documents as John and Jane Doe to file a petition for certiorari with the U.S. Supreme Court.

"I'm astounded by the swiftness of the decision and by the decision itself," Solovy said: "It's contrary to all Illinois precedent and to all notions of a civilized society."

Respondent's Exhibit 4-3
Chicago Tribune January 26, 1995
Baby Richard

...

Patrick Murphy, who represents the legal interests of the boy, said Jane Doe was "hysterical" and "wanted to leave the state."

"These justices are out of control," Murphy said at a news conference in his Chicago office. "This is a scene that I could not envision in my worst nightmares. This is probably the greatest proof in the world of the foolhardiness of an elected judiciary."

Respondent's Exhibit 4-13
Chicago Lawyer April 1995

... then-CBA president Thomas A. Demetrio, a personal injury lawyer, said from the podium"

"I don't mind it too much when the plaintiffs' personal injury trial lawyers are lambasted by the president of the United States, the vice-president of the United States, or by the so-called tort reformers. But I believe it to be unbecoming for a member of the judiciary to gratuitously exhibit his bias against plaintiff's personal injury trial lawyers in a published opinion."

Heiple stood up from the head table and walked out of the room. He returned later and took a seat in the audience...

Respondent's Exhibit 4-15
Chicago Lawyer April 1995

...

Heiple's opinions "just don't seem to be logical," Rotunda said. His style is very petulant. One can disagree with an appellate judge without attacking him personally. If an attorney wrote in his brief the same language that the judge wrote in the (Baby Richard) opinion, a lot of judges would criticize the attorney.

"... in the Baby Richard case he attacked Judge Rizzi, the Governor, the Legislature..."

Respondent's Exhibit 4-16
Court urged to reverse 'costly' pension ruling
Chicago Daily Law Bulletin October 14, 1996

...

In a petition for leave to appeal filed Friday by attorney M. Christine Heins of Murphysboro, the trustees contend that the appeals court's September 24 ruling would deplete pension funds throughout the state...

"This is a rogue decision, in conflict with all previous law in the state addressing the same issue, and merits the grant of a petition for leave to appeal," the board's argument concludes...

Respondent's Exhibit 4-18
Chicago Sun-Times February 25, 1996
Critics Label Panel An Embarrassment

Power and mystery surround the seven justices of the Illinois Supreme Court. They live a cloistered life style in apartments at taxpayer expense.

...

"Pretty actresses who can't act," said Daniel Polsby, a law professor at Northwestern University. "Certainly I can't say these Bozos are incompetent, but then you read the Baby Richard case," he said, referring to the 1994 ruling overturning the adoption of the boy and returning him to his natural father.

...

Respondent's Group Exhibit 22, pp. 3-4
Chicago Daily Law Bulletin February 14, 1996

Justice James D. Heiple's recent statement regarding his encounter with the Pekin Police Department is a discredit to the Supreme Court. Like any other defendant or potential defendant, Justice Heiple has the right to assert his innocence and is entitled to the full panoply of constitutional and statutory protections. But Justice Heiple's statement - issued, we understand on official Supreme Court stationery through the court's official spokesperson - raises serious questions about his ability to be fair in criminal cases coming before the court.

...

C. Steven Tomashefsky
President: Chicago Council of Lawyers

...

Respondent's Exhibit 39
Reviewing standards of appellate review
Chicago Daily Law Bulletin September 13, 1996
By Attorney Timothy P. O'Neill

In its 1995 term, the U.S. Supreme Court continued its performance of The Incredible Shrinking Docket. Its paltry output of 75 opinions makes an appointment to the Supreme Court look like a prestigious form of early retirement...

Respondent's Exhibit 22, page 8
Voters okay 6 subcircuit candidates who skipped or fared poorly in bar ratings
Chicago Daily Law Bulletin March 20, 1996

CCL (Chicago Council of Lawyers) President C. Steven Tomashefsky struggled to find a voting pattern among the subcircuit election returns Wednesday morning. He likened the voting process in the subcircuits to throwing darts.

...

Tomashefsky, who also favors merit selection of judges, said the election of a candidate as inexperienced as Hopkins made him very disappointed."

"I've got to assume she did something in her community that attracted attention to her," he said. "With subcircuits, it's often something other than your legal ability that gets you recognition."

...

Respondent's Exhibit 22, page 1
Chicago Daily Law Bulletin November 1995
Voters and justices bypass subcircuit talent

...

"When high-caliber judges are elected, it's by accident, says C. Steven Tomashefsky, the Chicago Council of Lawyers president and Jenner and Block partner.

Lawyers council renews call for basing judicial appointments on merit system

Chicago Daily Law Bulletin August 3, 1998

Letter to the editor

To the editor:

Eight weeks ago, the Illinois Supreme Court appointed former state representative Judy Koehler as a justice of the 3d District Appellate Court which sits in Peoria. Ms. Koehler f inished law school less than six years ago and, according to press reports, her work experience since then has been limited to lower-level county and state jobs and as legislative counsel to a lobbyist.

The appointment of Ms. Koehler as an appellate justice was, in reality, the decision of one member of the Supreme Court -- Justice James D. Heiple. Even though the legal power to make such appointments rests with all seven members of the high court, the unwritten tradition is that vacancies in the Appellate Court (and, for that matter, in the trial courts) are filled at the sole discretion of the Supreme Court justice who hails from the district where the vacancies occur and the other six justices simply defer to the hometown choice.

Although this one-person appointive system has sometimes produced outstanding justices, too often Supreme Court justices have used their appointive power as little more than old-fashioned political patronage, with no consideration of finding the best-qualified person.

The Chicago Council of Lawyers has long urged that the Supreme Court's appointive process be exercised on a merit basis. in 1987, the council petitioned the court to establish a public nomination

process for vacancies that would engage citizens, both lawyers and nonlawyers, to help select the best candidates for the bench, based on experience and qualifications, instead of limiting input to a handful of political insiders. Such a process could be adopted without a constitutional amendment or new legislation, yet the court has so far declined to do so.

The failure of the Supreme Court to submit its appointive process to public scrutiny is regrettable. It bespeaks an intention to continue to use the appointive power politically and to continue to ignore the public's right to a merit selection process. This practice virtually ensures that future appointments will pass over the best-qualified lawyers for judicial vacancies.

Kathleen L. Roach
President, Chicago Council of Lawyers

Chicago Daily Law Bulletin March 24, 1999

...

The Supreme Court also suspended the following attorneys for the following periods of time:

...

Roberto Cisneros Jr. of Chicago, (suspended) three years effective the date of his interim suspension last September. Cisneros was convicted of three counts of aggravated sexual abuse. The victim was a 15-year-old girl. M.R. 15558.

Federal Rule of Civil Procedure 11

Rule 11. Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion, and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,--

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after

a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) How Initiated.

(A) By Motion. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) On Court's Initiative. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b)

and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) Order. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed. .

(d) Inapplicability to Discovery.Subdivisions (a) through (c) of this rule do not apply to disclosures and discovery requests, responses, objections, and motions that are subject to the provisions of Rules 26 through 37.

Attorney Registration and Disciplinary Rule 53

Duty of Attorneys. The Administrator may request the respondent, or any other attorney who may have knowledge of pertinent facts, to provide information in writing, concerning the matter under investigation. Such requests by the Administrator may be made by letter. It shall be the duty of every attorney admitted to practice in this state to respond within 14 days to any request from the Administrator.

Attorney Registration & Disciplinary Rule 284

(a) Post-Trial Motions. Except as provided herein, post-trial motions shall not be filed with or considered by the Hearing Board. A matter which might otherwise be presented by post-trial motion may be the subject of an exception filed with the Review Board. Motions for an extension of time within which to file exceptions to the report of the Hearing Board shall be ruled upon by the chair of the hearing panel which prepared the report.

(b) Closing Argument. ...

735 ILCS 5/2-1001 Substitution of judge

(a) A substitution of judge in any civil action may be had in the following situations:

(1) Involvement of judge. When the judge is a party or interested in the action, or his or her testimony is material to either of the parties to the action, or he or she is related to or has been counsel for any party in regard to the matter in controversy. In any such situation a substitution of judge may be awarded by the court with or without the application of either party.

(2) Substitution as of right. When a party timely exercises his or her right to a substitution without cause as provided in this paragraph (2).

(i) Each party shall be entitled to one substitution of judge without cause as a matter of right.

(ii) An application for substitution of judge as of right shall be made by motion and shall be granted if it is presented before trial or hearing begins and before the judge to whom it is presented has ruled on any substantial issue in the case, or if it is presented by consent of the parties.

(iii) If any party has not entered an appearance in the case and has not been found in default, rulings in the case by the judge on any substantial issue before the party's appearance shall not be grounds for denying an otherwise timely application for substitution of judge as of right by the party.

(3) Substitution for cause. When cause exists.

(i) Each party shall be entitled to a substitution or substitutions of judge for cause.

(ii) Every application for substitution of judge for cause shall be made by petition, setting forth the specific cause for substitution and praying a substitution of judge. The petition shall be verified by the affidavit of the applicant.

(iii) Upon the filing of a petition for substitution of judge for cause, a hearing to determine whether the cause exists shall be conducted as soon as possible by a judge other than the judge named in the petition.

(4) Substitution in contempt proceedings. When any defendant in a proceeding for contempt arising from an attack upon the character or conduct of a judge occurring otherwise than in open court, and

the proceeding is pending before the judge whose character or conduct was impugned, fears that he or she will not receive a fair and impartial trial before that judge. In any such situation the application shall be by petition, verified by the applicant, and shall be filed before the trial of the contempt proceeding.

(b) An application for substitution of judge may be made to the court in which the case is pending, reasonable notice of the application having been given to the adverse party or his or her attorney.

(c) When a substitution of judge is granted, the case may be assigned to some other judge in the same county, or in some other convenient county, to which there is no valid objection. If the case is assigned to a judge in some other county, the provisions of subsections (f) through (m) of Section 2-1001.5 [735 ILCS 5/2-1001.5] shall apply.

Illinois Supreme Court Rule 63

Canon 3. A Judge Should Perform the Duties of Judicial Office Impartially and Diligently.

The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

A. Adjudicative Responsibilities.

(1) A judge should be faithful to the law and maintain professional competence in it. A judge should be unswayed by partisan interests, public clamor, or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before the judge.

(3) A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity, and should require similar conduct of lawyers, and of staff, court officials, and others subject to the judge's direction and control.

(4) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes or emergencies that do not deal with substantive matters or issues on the merits are authorized; provided:

(i) the judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and

(ii) the judge makes provisions promptly to notify all other partiesof the substance of the ex parte communication and allows an opportunity to respond.

(b) A judge may consult with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities or with other judges.

(c) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to mediate or settle matters pending before the judge.

(d) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

(5) A judge shall devote full time to his or her judicial duties and should dispose promptly of the business of the court.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to the judge's direction and control. This paragraph does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(7) Proceedings in court should be conducted with fitting dignity, decorum, and without distraction. The taking of photographs in the courtroom during sessions of the court or recesses between proceedings, and the broadcasting or televising of court proceedings is permitted only to the extent authorized by order of the supreme court.

(8) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, or national origin, and shall not permit staff, court

officials and others subject to the judge's direction and control to do so.

(9) Proceedings before a judge shall be conducted without any manifestation, by words or conduct, of prejudice based upon race, sex, religion, or national origin, by parties, jurors, witnesses, counsel, or others. This section does not preclude legitimate advocacy when these or similar factors are issues in the proceedings.

B. Administrative Responsibilities.

(1) A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require staff, court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge.

(3) A judge having knowledge of a violation of these canons on the part of a judge or a violation of Rule 8.4 of the Rules of Professional Conduct on the part of a lawyer shall take or initiate appropriate disciplinary measures.

(4) A judge should not make unnecessary appointments. A judge should exercise the power of appointment on the basis of merit, avoiding nepotism andfavoritism. A judge should not approve compensation of appointees beyond the fair value of services rendered.

(5) A judge should refrain from casting a vote for the appointment or reappointment to the office of associate judge, of the judge's spouse or of any

person known by the judge to be within the third degree of relationship to the judge or the judge's spouse (or the spouse of such a person).

C. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

(a) the judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) the judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;

(c) the judge was, within the preceding three years, associated in the private practice of law with any law firm or lawyer currently representing any party in the controversy (provided that referral of cases when no monetary interest was retained shall not be deemed an association within the meaning of this subparagraph) or, for a period of seven years following the last date on which the judge represented any party to the controversy while the judge was an attorney engaged in the private practice of law;

(d) the judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of

the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding, or has any other more than de minimis interest that could be substantially affected by the proceeding; or

(e) the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) is acting as a lawyer in the proceeding;

(iii) is known by the judge to have a more than de minimis interest that could be substantially affected by the proceeding; or

(iv) is to the judge's knowledge likely to be a material witness in the proceeding.

(2) A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse and minor children residing in the judge's household.

D. Remittal of Disqualification.

A judge disqualified by the terms of Section 3C may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and lawyers, without participation by the judge, all agree that the judge should not be disqualified, and the judge is then willing to

participate, the judge may participate in the proceeding. This agreement shall be incorporated in the record of the proceeding.

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Disqualification of justice, judge, or magistrate

(a) Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

(b) He shall also disqualify himself in the following circumstances:

(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) Where in private practice he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

(3) Where he has served in governmental employment and in such capacity participated as counsel, adviser or material witness concerning the proceeding or expressed an opinion concerning the merits of the particular case in controversy;

(4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding,

or any other interest that could be substantially affected by the outcome of the proceeding;

(5) He or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Is acting as a lawyer in the proceeding;

(iii) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(iv) Is to the judge's knowledge likely to be a material witness in the proceeding.

(c) A judge should inform himself about his personal and fiduciary financial interests, and make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

(d) For the purposes of this section the following words or phrases shall have the meaning indicated:

(1) "proceeding" includes pretrial, trial, appellate review, or other stages of litigation;

(2) the degree of relationship is calculated according to the civil law system;

(3) "fiduciary" includes such relationships as executor, administrator, trustee, and guardian;

(4) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, adviser, or other active participant in the affairs of a party, except that:

(i) Ownership in a mutual or common investment fund that holds securities is not a "financial interest"

in such securities unless the judge participates in the management of the fund;

(ii) An office in an educational, religious, charitable, fraternal, or civic organization is not a "financial interest" in securities held by the organization;

(iii) The proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) Ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

(e) No justice, judge, or magistrate shall accept from the parties to the proceeding a waiver of any ground for disqualification enumerated in subsection (b). Where the ground for disqualification arises only under subsection (a), waiver may be accepted provided it is preceded by a full disclosure on the record of the basis for disqualification.

(f) Notwithstanding the preceding provisions of this section, if any justice, judge, magistrate, or bankruptcy judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the matter, because of the appearance or discovery, after the matter was assigned to him or her, that he or she individually or as a fiduciary, or his or her spouse or minor child residing in his or her household, has a financial interest in a party (other than an interest

that could be substantially affected by the outcome), disqualification is not required if the justice, judge, magistrate, bankruptcy judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.